



Response to Public Comment Period on NMLS Modernization: MSB Business-Specific Requirements



A Component of the
NMLS Modernization
Initiative

Comment Period: May 24, 2021 –
July 23, 2021



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Response to Public Comment Period on NMLS Modernization: MSB Business-Specific Requirements May 24, 2021 – July 23, 2021

Between May 24, 2021, and July 23, 2021, on behalf of the NMLS Policy Committee¹, the Conference of State Bank Supervisors (CSBS)² invited public comment and feedback on the MSB Business-Specific Requirements. [Click here](#) to access the proposal. With the feedback received, the NMLS Modernization Steering Committee (Steering Committee)³, NMLS Policy Committee, and CSBS intend to continue to develop the modernized NMLS system in a way that supports Networked Supervision and the state system. [Click here](#) to access all submitted comments.

Goals

CSBS is working to develop a next generation nationwide multistate licensing and supervisory technology system to anticipate and accommodate the evolving needs of the state system of financial regulation. The goal is to build a new system to:

- Streamline the license application process
- Empower state authority through data-driven solutions
- Promote efficient operations and networked supervision among regulators
- Create an optimized user experience

The modernized NMLS will require adapting to new ways of thinking about how regulators will work together. The concept of networked supervision creates a framework for:

- Full information sharing
- Eliminating redundancies
- Interdependent reviews
- Common standards
- Data standardization

The Steering Committee and the NMLS Policy Committee have developed the MSB Business-Specific Requirements to support the goals of the NMLS Launch Product⁴, which aligns with the requirements of the [Model Money Transmission Modernization Act](#) (“Model Law”). On November 13, 2020, the SRR Board of Managers directed staff to build the MSB Launch Product to a national standard, as outlined in the Model Law. The Model Law was approved in full by the CSBS Board of Directors on August 9, 2021.

¹ Information about the NMLS Policy Committee can be found [here](#).

² Information about the Conference of State Bank Supervisors can be found [here](#).

³ Information about the NMLS Modernization Steering Committee can be found [here](#).

⁴ The first phase of the modernized NMLS, will include an end-to-end system to serve money services businesses (MSB) regulators and industry.



Background

The modernized NMLS will allow state agencies to achieve greater transparency, uniformity, and standardization – all of which are keys to the future of license supervision. A modernized NMLS will also create more efficiencies through uniform requirements and review standards.

MSB Business-Specific Requirements

In the new version of NMLS, companies and individuals will be required to complete Business-Specific Requirements as part of their license applications.

Business-Specific Requirements are items generally required for licensing of specified Business Activities. All companies obtaining a license in that business must complete these requirements. Business-Specific Requirements are not configurable by state agency and are universal to all companies offering services or products in that business. All entities obtaining a license in that business through NMLS must complete these requirements.

Business-Specific Requirements supplement Core Requirements, which are generally demographic, and required of all nonbank entities licensed through NMLS, regardless of industry. Core Requirements are not configurable by state agency and are universal to all nonbank financial service companies.

Networked Licensing Model, Licensing Requirements Framework & Core Requirements

To support the NMLS Modernization goals, the NMLS Launch Product and networked supervision, the Steering Committee has developed the Networked Licensing Model, Licensing Requirements Framework, and the Core Requirements Proposal. For more information, see the [Response to Public Comment Period on NMLS Modernization: Networked Licensing Model, Licensing Requirements Framework, Core Requirements & Identity Verification](#)

The Networked Licensing Model (the Model) is the foundation of the NMLS Launch Product. Inspired by and modeled after the [Multistate MSB Licensing Agreement Program \(MMLA\)](#), the Model strives to increase efficiencies in the licensing process for both state regulators and industry applicants/licensees, while recognizing the needs of both groups. Beginning with the money services businesses (MSB) industry, the Model will be the basis for licensing all industries, including mortgage, debt, and consumer finance, in the Modernized NMLS. Like the MMLA, the Model, allows for state regulators to share and eliminate duplicative work, while retaining their authority over licensing in their state. The Model greatly benefits applicants and licensees by increasing clarity around license requirements, providing an initial primary point of contact, and improving application turn times.

To organize common and unique license requirements, the NMLS Modernization Steering Committee has developed the Licensing Requirements Framework (the Framework). The Framework is intended to segment licensing requirements in a way that standardizes data collection, while providing state regulators with the information they need to make educated licensing decisions. The Framework divides licensing requirements into three categories: Core Requirements, Business-Specific Requirements, and License-Specific Requirements.



Under the Model, all companies, individuals, and locations, regardless of business model, the industry they are operating in or licenses they hold, will be required to provide a standard set of information, and meet standardized requirements, referred to as Core Requirements. Core Requirements, or “Core”, is defined as demographic and other basic information all nonbank entities, regardless of industry, are required to provide. Core Requirements are not configurable by state agency and are universal to all nonbank financial service companies. The Core Requirements includes data points and information from the current NMLS Company Form, Branch Form, and Individual Form in use in NMLS, unless otherwise noted.



Executive Summary

CSBS received seven responses from the following companies and organizations:

- Approved | Buckley, LLP
- Fenimore, Kay, Harrison, & Ford, LLP
- INFiN – A Financial Services Alliance
- LL Pay US, LLC
- Money Services Business Association*
- Southwest Check Cashing
- The Money Services Round Table

Based on the responses received, the industry is very supportive of the NMLS Modernization goals of increased efficiencies and a streamlined license application process. Commenters noted that MSBs could benefit from a national system where there is uniformity and a streamlined licensing application approach, that the information proposed to be collected is what would be expected in an undertaking such as this. They also recognize that this information will help increase transparency among regulators and licensees. Commenters did note concern around the possibility of increased costs for small or average-sized MSBs, particularly around the price of obtaining audited financial statements if required. Overall, industry did not oppose the majority of the MSB Business-Specific requirements identified in the proposal.

* MSB comments were in the Associations' comment letters for the Core Proposal.



Comments & Responses

The Steering Committee and CSBS reviewed the seven responses to the request for comments. Below is a summary of the comments and changes made in the approach based on the comments, and continued discovery and development of the new system. [Click here](#) to access the submitted responses.

Thirty-seven questions or comments were pulled from the seven responses received. Those 37 comments were separated into 14 comment categories and are addressed in full below. The top three categories of concern were:

- Requirements (specific requirements referenced)
- Business Activities
- Policies and Procedures

Business Activities

A. Commenters noted several business activity definitions that were of concern, including:

- Bi-weekly payment processing
- Bill payment
- Check Cashing
- Electronic Money Transmission
- Issuing Money Orders
- Selling Money Orders
- Issuing Prepaid Access/Stored Value
- Selling Prepaid Access/Stored Value

Commenters also expressed that business activities should be drafted to meet statutory definitions and should not be characterized by types of services.

CSBS Response

A future CSBS initiative will be to complete a holistic review of all business activity definitions and make updates as needed. However, business activities are not drafted to meet statutory requirements. Business activity definitions are intended to be generic, non-legal definitions of a financial service activity that reasonably defines the activity. They are also used as an organizing descriptor of licenses.

Newly added or amended business activity definitions go through a thorough vetting process, which includes input and review from the following groups:

- NMLS Policy Committee
- SRR Lawyers Committee
- Consumer Financial Protection Bureau
- NMLS Modernization Steering Committee
- NMLS Participating State Agencies



- Industry Development Working Group

B. Payment Processing

Commenters noted that currently there is no payroll processing business activity included in the MSB Business-Specific Proposal.

CSBS Response

After consultation with the Steering Committee and the NMLS Policy Committee, it was decided that a business activity for payroll processing should be developed as the activity is covered in the Model Law.

Cost Increase

Commenters expressed concern about possible increases in cost in conjunction with the development of the modernized system. Although, there may be other instances when cost increases will apply, the majority of the concern is around the requirement of audited financial statements specifically for small or average sized companies. It was requested that unaudited financial statements or other forms of financial reports be permitted to satisfy the financial statement requirement.

CSBS Response

Per the proposal, if a small or average sized company does not have audited financials available, they would need to upload all financials required in the unaudited section, specifically:

- Financial statement as of most recent quarter end (at a minimum: balance sheet and income statement).

Document Samples

Commentors requested more clarity about what is required for certain document samples and requested that the descriptions be based on statutory requirements. It was also suggested that certain categories such as “receipts” be differentiated between “licensees” and “authorized senders.”

CSBS Response

CSBS will continue to work on document sample descriptions to provide industry with as much clarity as possible on what needs to be uploaded. After consultation with the Steering Committee, it was decided that there would not be separate categories to differentiate between different types of a document supplied by different individuals. The committee was concerned that this would create a level of confusion amongst industry as well as an increase in upload errors.

Key Individual Requirements

A. Third-Party Background Checks



Commentors requested that NMLS have functionality to match the requirements of the Model Law regarding Third-Party Background Checks, namely that a Key Individual:

- is not required to provide fingerprints for a CBC if the individual currently resides outside of the United States and has resided outside of the United States for the last ten years; and
- is not required to submit a credit report from a consumer reporting agency if the individual does not have a Social Security number.

CSBS Response

As directed by the CSBS Board, the MSB launch product is being built to include a national standard which is based on the Model Law. Therefore, the above-mentioned requirements from the Model Law will be accommodated in the modernized system.

B. Disclosure Questions

Commentors requested that disclosure questions be amended to only include disclosures that are required under state money transmission statutes and the Model Law.

CSBS Response

Disclosure Questions are currently being re-evaluated by the NMLS Policy Committee through a separate engagement process, which will also include a public comment period. This comment will be evaluated during that process.

Lead Agency

Commentors expressed that the modernized system will require core, business-specific and license-specific requirements to be completed before having a lead agency assigned. They also noted certain states require an applicant to have a bank account established prior to accepting documents and the commentors requested that in the new system documents be permitted to be submitted if the bank account is pending.

CSBS Response

All license-specific information is not required to have a lead agency assigned, but the license-specific requirements for the lead agency will be required to submit an application. Applicants will also need to complete all relevant license-specific requirements prior to applying to other application agencies in Phase 2. License-specific requirements will still be determined by the relevant regulator, including whether the bank account can be pending.

Licensing Process

Commentors noted a streamlined licensing process could make it easier for MSBs if an application only has to be submitted once. They also stated it is not clear from the proposal to what extent information submitted for one state application can be used by another.



CSBS Response

Two goals of the modernized NMLS are to promote efficient operations and networked supervision among regulators and to create an optimized user experience. To accomplish these goals CSBS is working to streamline the application process as much as possible. The current approach is that the first application for every company will be reviewed by a single agency, serving as the Lead Agency. The Lead Agency will complete a review of both the core requirements and business-specific requirements. At the conclusion of their review, the Lead Agency will issue a Phase 1 Review, which will be shared with all subsequent application agencies. Subsequent application agencies would be able to see the submitted information and Phase 1 Review for which they have the appropriate regulatory authority. Applicants would only need to supply application agencies with their license-specific requirements. Applicants would not need to resubmit the core and business-specific requirements for subsequent application agencies.

Location Reporting

A. Fields Required to be Reported

Commentors noted business activities, license authority, and name of the individual responsible for licensed activity at the company owned location is not required by current laws or the Model Law, and therefore, should not be required to be reported in the modernized system.

CSBS Response

After consultation with the Steering Committee, it was decided that these fields add value and should not be removed. Committee members stated that business activities assist the states in finding unlicensed activities. They also noted branch managers are required in some states, and the majority of states are permitted to request by statute or regulation any other reasonable information required for an application decision to be made. This permission is also listed in the Model Law, §5.03(b)(11).

B. Third-Party Vendor Information

Commentors had concerns with the reporting of certain third-party vendor information, specifically noted were address/location information where support staff for licensed activity are located, details regarding cloud storage services, and internal and third-party legal service providers.

CSBS Response

Concerns about the collection of third-party vendor information have been discussed with the NMLS Policy Committee. The committee has requested that CSBS continue to work on this topic and report back to them on these concerns.



Modernization Process

Commentors noted that although the policy stated that check casher information would be separated from money transmission that there were instances where check casher information was included, such as in the policies and procedures and document samples.

CSBS Response

Most check cashing licenses and money transmitter licenses are separate in states. However, some state money transmitter licenses permit the check cashing activity. Therefore, requirements for policies and procedures and document samples were included.

Periodic Reporting

Commentors questioned whether the periodic reports listed in the proposal (MSB Call Report, Uniform Authorized Agent Information, and Financial Statements) would be required from check cashers. Commentors also noted that audited financials should be removed from the periodic reporting list because it is not necessarily a report required to be completed by a licensee.

CSBS Response

Check casher requirements are still under review. More information will be shared as soon as it is available. Financial statements were included in the reporting list since they are required annually.

Policies and Procedures

A. Recategorization of Certain Policies to License-Specific

Commentors requested that the following policies and procedures be moved from MSB Business-Specific Requirements to License-Specific Requirements because they are not required by all States:

- Gramm-Leach-Bliley Act
- Disaster Recovery/Business Continuity Policy/Manual

CSBS Response

After consultation with the NMLS Policy Committee the decision was made to leave these policies and procedures as MSB Business-Specific Requirements. For the Disaster Recovery/Business Continuity Policy/Manual, the committee decided that all companies should be required to submit this policy but that the requirement of what needs to be submitted should be scalable to the size of the company. The Policy Committee requested that more research be done on the Gramm-Leach-Bliley Act and then re-presented to them for further consideration. Updates will be given on these policies and procedures as soon as they are available.

B. More Information on What is Required

Several commentors requested more clarity on what needs to be uploaded for the required



policies and procedures.

CSBS Response

CSBS will continue to work on policies and procedures descriptions to provide industry with as much clarity as possible on what needs to be uploaded.

Requirements

A. Bank Account Information - Trust Accounts

Commentors stated that money transmission companies do not use trust accounts to provide services and that they would not be permissible investments because they are not owned solely and exclusively by the licensee. The suggestion was made that the term “customer funds account” be used in lieu of “trust account.”

CSBS Response

The request to change “customer funds account” in lieu of “trust accounts” was discussed with both the Steering Committee and the NMLS Policy Committee. The Steering Committee had concerns about removing “trust accounts” from the Bank Account Information requirements because several states do require trust accounts for MSB Activity and have them defined as a requirement in their state statutes. However, the Steering Committee drafted edits to the requirement to address this comment. This edit was approved by the NMLS Policy Committee. (Added language is in red, shifted language is italicized).

Account(s) used for your money transmission activities, including **any accounts where you hold customer funds**, in the Bank Account section of the Company Form (MU1). The account(s) must be business accounts in the name of the applicant *and may include operating, trust, and line or letter of credit accounts*.

B. Outdated Requirements and License-Specific Requirements

Commentors requested that regulators remove outdated requirements and that license-specific requirements be kept to a minimum.

CSBS Response

CSBS is currently working with state agencies to find ways to limit the number of license-specific requirements that are necessary at application. This includes review of and removal of outdated requirements when appropriate.

C. Payroll Processor Requirements

Commentors noted FinCEN does not currently require registration of payroll processors due to their business model, so accommodations would need to be made. It was also noted since payroll processors were not required to register, that accommodations would also need to be made around this BSA/AML requirement and that more guidance would be needed as limited payroll



processors would not know what standards a particular state required of it.

CSBS Response

After consultation with the Steering Committee, it was decided companies that are not required to register will need to upload documentation supporting that determination from FinCEN. This is not just for payroll processors but for any company where FinCEN has made this determination. BSA/AML requirements are still in the development stage. This comment will be taken into consideration throughout this development process.

D. Financial Statements

Commentors expressed financial statements should be consistent with statutory requirements, meaning audited financials should be required for the most recent fiscal year and for the two years next preceding the application. Commenters also suggested that applicants be required to submit a certified copy of their unaudited financial statements for the most recent fiscal quarter.

CSBS Response

The current CSBS proposal echoes the requirements of the Model Law, specifically that, “the applicant should provide a copy of audited financial statements of the applicant for the most recent fiscal year and for the two-year period next preceding the submission of the application...” §503(b)(6). The proposal also permits an applicant that does not have audited financials available, to upload unaudited financials which include, the financial statement as of the most recent quarter end (at a minimum: balance sheet and income statement).

E. Flow of Funds Structure

Commentors noted the flow of funds structure requirement description should be changed to be consistent with the scope of regulated money transmission activities. The specific request was that “consumers” and “beneficiaries” should be changed to “customers” and “payees.”

CSBS Response

The Steering Committee and NMLS Policy Committee agreed that this change should be made as it makes the requirement description terminology consistent with the language of the Model Law.

F. Authorized Agents/Delegates Terminology

Commentors noted the MSB Business-Specific Proposal and NMLS, use the terms “authorized delegate” and “authorized agents” interchangeably. Commentors suggested that “authorized delegate” should be used moving forward.

CSBS Response

The Steering Committee and NMLS Policy Committee agreed this change should be made as it makes the requirement description terminology consistent with the language of the Model Law.



G. Authorized Delegate Onboarding Process

Commentors requested more guidance be provided regarding what must be submitted for the authorized delegate onboarding process and that it aligns with the requirements of the Model Law.

CSBS Response

The Steering Committee and NMLS Policy Committee agreed that this change should be made as it makes the requirement description terminology consistent with the language of the Model Law.

H. BSA/AML Policy

Commentors requested the proposal more clearly state the required materials to be provided by industry. They also expressed concern about the inclusion of the PATRIOT Act Policy, and the “Relevant and Ongoing Training of Employees Policy” with the BSA/AML Policy, unless required by specific state regulations or statutes. Concerns were also raised around the inclusion of the BSA/AML Fifth Pillar in the proposal.

CSBS Response

After consultation with the Steering Committee and the NMLS Policy Committee it was decided not to change the inclusion requirement of the PATRIOT Act Policy and the Relevant and Ongoing Training of Employees Policy with the BSA/AML Policy. These policies are currently reviewed in conjunction with the BSA/AML Policy by most states and will be uploaded into the system as one document. CSBS will continue to work on the BSA/AML Policy description to provide industry with as much clarity as possible on what needs to be uploaded. At this time, the BSA/AML Fifth Pillar will not be included in the review of the BSA/AML Policy as it is only applicable to certain covered institutions.

Required Functionality

Commentors suggested NMLS include statutory requirements for an Electronic Surety Bond (ESB) in the proposal description for ESBs in lieu of a general description of how an ESB works

CSBS Response

CSBS will take this comment into consideration when updating proposal requirement descriptions.

Use of Money Services Businesses Terminology

Commentors noted “Money Services Businesses” is a term used for the federal BSA program and due to that fact, NMLS should not use the term “Money Services Businesses” when referring to state-licensed money transmitters but should use the term “money transmission.”



CSBS Response

After consultation with the Steering Committee, it was determined that Money Services Businesses was the most logical term to use as an overarching category that could contain the proposal's noted business activities.

Virtual Currency

Commentors requested that virtual currency be separated into a money transmission subgroup due to its uniqueness. If not, they have requested that state regulators use this opportunity to clarify requirements for new applications and quarterly reporting of the MSB Call Report.

CSBS Response

After consultation with the Steering Committee, it was decided to not separate virtual currency into a money transmission subgroup. The current model was developed after extensive research into business activities and the percentage of license types that they were attached to. At that time 100% of states that used the virtual currency business activity attached it to a money transmitter license. The committee does agree that this is a new industry and understands that several states are still determining how this new business type will be regulated, however, they believe that it will most likely fall under the money transmission statutes and regulations. The committee also agreed that more information should be provided by states to industry as they work through these decisions.