

**RESPONSES TO COMMENTS RECEIVED DURING THE NMLS COMMENT PERIOD
ON BACKGROUND CHECKS SEPTEMBER 14, 2009 TO OCTOBER 14, 2009**

Background

On September 14, 2009, on behalf of the state regulatory agencies participating in the Nationwide Mortgage Licensing System and Registry (NMLS, or “the System”)¹, the State Regulatory Registry LLC² invited public comments on the proposed implementation of background check processing in NMLS ([See notice on NMLS Resource Center](#)).

Background check processing in NMLS will require mortgage loan originators and other individuals to (1) furnish fingerprints for the purpose of obtaining a national criminal history background check and (2) give NMLS authorization to request and obtain an independent credit report. Background check processing in NMLS will provide state mortgage regulators with criminal and credit history information concerning individuals applying for or maintaining licensure in an efficient and transparent method. In order to be compliant with the SAFE Act³, by deadlines established by their regulator, all state licensed mortgage loan originators will be required to undergo a criminal and credit background check processed through NMLS.

When the public comment period ended on October 14, 2009, SRR had received nearly 200 comments from 110 commenters. These commenters included state mortgage regulators, state criminal record repositories, depository institutions, state-licensed mortgage companies, individuals and industry trade groups.

The comments were reviewed by NMLS’ Mortgage Licensing Policy Committee (MLPC).

The following is a discussion of the major topics raised in the comments and NMLS’ review and response to those comments.

I. Fingerprint Based FBI Background Check

The majority of comments received on criminal background checks were generally supportive of this requirement but some questions were raised concerning the procedure and timing of providing fingerprints and obtaining criminal background checks.

¹ Information about NMLS can be found at: <http://mortgage.nationwidelicencingsystem.org>.

² Information about the State Regulatory Registry LLC can be found at: <http://www.stateregulatoryregistry.org>.

³ Information about the SAFE Act can be found at: <http://mortgage.nationwidelicencingsystem.org/SAFE>.

1. State Background Check

Eight commenters representing state criminal record repositories and a few state mortgage regulatory agencies indicated support for NMLS processing of state background checks in addition to a national background check. These commenters suggested that state background checks contain information that might not be contained on a national background check and that state background checks provide important financial resources to maintain criminal records that are the basis for most of the national criminal background check data.

NMLS Response:

The SAFE Act requires NMLS to receive fingerprints for the purpose of processing criminal background checks. NMLS has been approved as a channeler with the Federal Bureau of Investigation (FBI) and has developed the necessary connectivity software, processing and storage hardware, data security policies, and legal agreements to process national background checks with the FBI. This process, which has taken over 16 months to develop, will allow NMLS to efficiently process a single national criminal background check for a mortgage loan originator (MLO) anywhere in the U.S. or its territories for a license application in one or more states, the District of Columbia, or U.S. territories. Due to time constraints, NMLS has not established the necessary connectivity and processing software, policies and legal agreements with state repositories to channel state background checks.

Currently, some state agencies require the return of a state background check in addition to a FBI background check and have indicated their desire to process the additional background check through NMLS. NMLS is pursuing state by state solutions but recognizes this will take time. The criminal background check functionality release scheduled for January 25, 2010 will process only a national background check with the FBI.

NMLS has been working with the FBI's Compact Council⁴ to determine an efficient method to incorporate state background checks when requested by a

⁴ On October 9, 1998, President Clinton signed into law the National Crime Prevention and Privacy Compact Act of 1998 (Compact) United States Code, (U.S.C.) Title 42, Chapter 140, Subchapter II, Sections 14611-14616. The Compact facilitates electronic information sharing among the Federal Government and the states and permits the exchange of criminal history records for noncriminal justice purposes when authorized by federal or state law. More information about the Compact Council can be found at: [FBI Compact Council](#)

state mortgage regulator. To date, no single solution has been developed. NMLS is interested in continuing to work with the FBI's Compact Council to find an efficient method to ensure that the value a state background check brings to a licensing decision is incorporated into the license decisioning process.

2. Availability of Livescan Locations

Three commenters stated the necessity for comprehensive livescan⁵ coverage in order to provide the greatest convenience to mortgage loan originators. In order to obtain or maintain a license, mortgage loan originators will be required to submit fingerprints to NMLS. NMLS stated its intention to provide a comprehensive network of livescan locations for mortgage loan originators to utilize in the fingerprinting process. Commenters, however, expressed concern that some mortgage loan originators, particularly in rural areas, would find this requirement burdensome and asked for a specific mileage limit on the distance a mortgage loan originator would be required to travel to a livescan location.

NMLS Response:

From the initiation of the NMLS criminal background check process, NMLS recognized that MLOs who submit fingerprints electronically will realize shorter processing time and lower costs. This is due to the fact that prints taken electronically do not need to be manually scanned and have a lower error rate with the FBI which lessens the need for reprints. Thus, NMLS' goal is to have as electronic a process as possible.

To effectuate this, NMLS has contracted with a firm to provide a nationwide network of over 1,000 NMLS approved livescan sites, with locations generally determined by population, to serve mortgage loan originators throughout the country. While we think this will place the vast majority of MLOs within a reasonable distance of a livescan site, NMLS cannot guarantee that states will have a specific number of livescan locations.

NMLS agrees with the concerns raised as to MLOs located in rural areas or outside of a reasonable range of a livescan location. In response to the concerns on distance traveled to a livescan location, NMLS will supplement the livescan network with a card-based option. This option will enable mortgage loan originators not located within a specified distance from a NMLS approved livescan site to request a paper card and have their prints ink-rolled and the card

⁵ "livescan" is a term indicating the electronic capture of fingerprints on specialized hardware and software for transmittal to a channeling server for processing of a criminal background check. Livescan capture is different than "cardscan" capture which requires paper cards with prints taken by ink.

scanned by NMLS' vendor and then processed electronically. The policy adopted by NMLS' Mortgage Licensing Policy Committee will offer a card scan option to any MLO located in an area designated as "rural" who is more than 50 miles from an NMLS approved livescan location. MLOs located in areas designated "suburban" and "urban" will be offered a cardscan solution if they are greater than 30 and 10 miles (respectively) from an NMLS approved livescan location.

3. Use of a Pre-Established Fingerprinting Process or Use of Prints Already on File

Three commenters suggested that NMLS accept existing prints on file with a company rather than requiring new prints to be taken. Also, several large mortgage companies requested that they be permitted to continue to utilize existing internal fingerprinting processes using their own vendors.

NMLS Response:

NMLS will not accept prints maintained by a mortgage company for use under the SAFE Act. NMLS has reached this conclusion based on two factors. First, in order to best ensure the authenticity of the fingerprints submitted to NMLS and to maintain an appropriate chain of custody, fingerprints must be collected by NMLS's approved livescan vendor under processes and protocols that have been established by NMLS. These processes and protocols are consistent with the guidelines that have been drafted by the FBI's Compact Council.

Secondly, NMLS believes that costs, for both the mortgage company and NMLS, associated with building a separate process to accept prints on file with a mortgage company may exceed the costs of using the existing process developed by NMLS.

Having stated this, NMLS does recognize that certain large companies may benefit from making special arrangements for on-site capture and NMLS agrees to work with our livescan vendor to accommodate such arrangements.

4. Frequency of Fingerprinting and Criminal Background Check

Approximately 10 questions and comments were submitted requesting clarification regarding how often a mortgage loan originator must submit fingerprints through NMLS and how often a criminal background check will be required.

NMLS Response:

NMLS has worked closely with the FBI to establish sufficient procedures to ensure the fingerprints submitted to the FBI meet its standards and requirements.

The FBI considers criminal history record information to be “stale” the moment the records check is issued to an authorized recipient. In order for state mortgage regulators to have the most current information available to them when making a licensing decision, a new FBI background check must be delivered in connection with each new license filing. Licensees considering licensure in multiple jurisdictions should submit license requests for these jurisdictions at the same time in order to take advantage of the ability for one background check to be made available to multiple regulators for just one fee.

In order to ensure compliance with the SAFE Act provisions, state regulators expressed the desire to require a new criminal background check every three years. Going forward, NMLS will work with the FBI to implement a comprehensive notification process that will allow automatic notice of subsequent changes in a licensee’s criminal history record. This functionality should simplify and streamline the process for mortgage loan originators. However, in the interim, the current policy of NMLS will require mortgage loan originators to submit new fingerprints to NMLS every three years for a new national criminal history record check.

II. *Credit Reports/Credit Scores*

The vast majority of comments received during the comment period addressed the proposed credit report and credit score functionality in NMLS. While NMLS will provide each state regulator with a credit report, credit score and flags to efficiently review this information, each state regulator will develop their own policies to determine what constitutes financial responsibility, as mentioned in the SAFE Act and state statutes, when granting a license.

1. Disagreement on Obtaining Credit Report

The majority of comments submitted suggested that obtaining credit reports on individuals in conjunction with a license request should be reconsidered. Most of the comments asserted that the national economic situation has negatively affected mortgage loan originators disproportionately and this will be reflected on the credit reports. Also, many commenters noted the information on credit reports is often inaccurate and questioned state regulator reliance on such information.

NMLS Response:

The SAFE Act requires state regulators to determine the financial responsibility of mortgage loan originators and requires mortgage loan originators to authorize NMLS to obtain a credit report. In developing the [CSBS/AARMR SAFE Implementation Plan](#), state mortgage regulators decided that obtaining a credit report and reviewing its contents is the most efficient tool available to determine an individual's financial responsibility. State regulators believed that to have the authority to request a credit report, but not use this authority, would not be prudent public policy. At the same time, most state regulators have indicated in discussions that a credit report would not be the sole basis for license denial.

Thus, NMLS will continue with the development of incorporating automated processing of credit reports through NMLS. It is important to make clear that NMLS merely processes credit reports. Each state regulatory agency establishes its own review policies.

2. Disagreement on Obtaining Credit Score

The proposal by state regulators to obtain a credit score along with the credit report drew many comments on the necessity of obtaining a credit score in addition to a credit report and concerns that state regulators will rely solely on an individual's credit score to determine financial responsibility.

NMLS Response:

Currently (and prior to the passage of the SAFE Act) several states required a credit score to be obtained along with a credit report as one element of their licensing process. If NMLS does not provide a credit score as part of its functionality, then these states would require a score be provided outside NMLS at an additional cost to the MLO. Based on discussions with potential credit vendors, NMLS is confident that providing a credit score with the credit report will not significantly increase the cost to the MLO. Therefore, NMLS believes it is more efficient and less costly for MLOs to have the credit score delivered as part of NMLS credit report processing. State regulators will be able to view the credit score and use it as part of their review of credit information. NMLS processing will not require the state regulator to consider the credit score in their licensing decision.

It should be noted that the SAFE Implementation Working Group, which is comprised of regulators from 18 jurisdictions, recommended that the use of a credit score alone should not be the basis of a licensing or renewal decision.

Based on the concerns expressed during the comment period on credit scores, regulators have decided that “flagging” a credit score is not necessary at this time. Therefore, NMLS will not establish a credit score threshold to flag to regulators.

3. Flags and Score Thresholds

In the proposal, NMLS solicited comments regarding (1) the flagging of specific items in a credit report which may lessen the manual review process for regulators and (2) identifying a credit score that will provide an appropriate threshold to trigger manual review.

Two industry comments were received on the proposed flags – bankruptcies, liens, judgments, etc. These comments suggested the initial proposed flags will capture the appropriate information of interest to a state mortgage regulator.

Some industry commenters suggested specific scores as thresholds. These suggestions ranged from 520 – 700 as an appropriate threshold to trigger manual review. A few commenters also suggested that these scores be used as a minimum requirement for licensure.

NMLS Response:

NMLS does not find any reason not to incorporate flags in order to assist state regulators in automating processing. However, as noted above, the credit score, while remaining a part of the information received from the credit repositories, will no longer be automatically flagged for review. At this point, the flags that are intended to be used are as follows:

- Bankruptcies filed within the last 10 years;
- Current outstanding judgments (except judgments solely as a result of medical expenses);
- Current outstanding tax liens or other government liens and filings;
- History of and current Collection Accounts;
- Foreclosures within the past three years;
- Three or more accounts currently more than 90 days past due;
- Multiple Social Security Numbers attached to the individual’s name;
- Consumer provided comments;
- No credit history for the individual;
- Credit items the individual is appealing, if noted in the report; and
- Delinquent Child Support Payments

NMLS will continue to review flags used in NMLS credit report processing based on regulator feedback. Each state mortgage regulator will use their own criteria

for obtaining further information from a licensee if they believe information contained in a credit report or credit score data warrants further review.

Again, NMLS would like to reiterate that the flags identified above are used only to automate processing in NMLS. Each regulator will undertake their own review of the credit information and apply their own standards.

4. Making Information Publicly Available

Several commenters made the assumption that credit report information would be made publicly available and expressed concern based on this assumption.

NMLS Response:

NMLS and state regulators have no intention of making credit report information available to the public. This information will only be viewable by state mortgage regulators who license the individual or who have received an application for licensure.

5. Frequency of Obtaining Credit Information

Some commenters were confused on the frequency that credit information would be requested.

NMLS Response:

NMLS is still in discussions with potential credit vendors to develop functionality in the system for credit report processing. One of the requirements of credit vendors is full and accurate reporting by NMLS to the credit vendor of which state regulators have viewed the credit information. The solution that has been developed to date requires a new credit report with each new license request. Thus, licensees considering licensure in multiple jurisdictions should submit license requests for these jurisdictions at the same time in order to take advantage of the ability to make the same credit information available to multiple regulators. NMLS is actively investigating with credit vendors the ability to use previously obtained credit reports for subsequent license applications for a specific window of time (i.e. allowing a credit report pulled on February 1st to be used for a new application on February 20th without requiring a completely new credit report).

It should be noted that state mortgage regulators may require a new credit report and credit score be supplied to them at other intervals at their discretion. NMLS functionality is being built to accommodate this request.

III. General

1. Privacy and Security

The SAFE Act requires NMLS to collect and hold fingerprints and credit information for mortgage loan originator licensees and license applicants. Several commenters raised concerns on the security of holding this personal information.

NMLS Response:

NMLS takes privacy and data security very seriously. The [NMLS Privacy Policy](#) is available on the NMLS and the NMLS Resource Center. In building NMLS, CSBS contracted with the Financial Industry Regulatory Authority (FINRA) to build and operate NMLS on the same infrastructure and incorporating the same data security as is used in the securities industry's Central Registration Depository (CRD) and Investment Advisor Registration Depository (IARD).