



## *Request for Public Comments*

### **Proposed Changes to Company and Branch Filing Attestations**

March 29, 2016

On behalf of the state regulatory agencies participating in NMLS,<sup>1</sup> the State Regulatory Registry LLC<sup>2</sup> (SRR) invites public comments on:

1. The proposed changes to Company Form (MU1) and Branch Form (MU3) filing attestations.

#### **Goal of System Attestations**

The System attestations, required as part of filing submissions through NMLS, serve to provide assurance to state agencies that the information contained in a record is true, accurate and up to date. By attesting to a certain filing, applicants and licensees are making a legal attestation to all states in which they are applying for or maintaining a license through NMLS. Companies are required to attest upon initial license application, subsequent license applications or amendments to the company or branch record, renewal of approved licenses, and when submitting a Mortgage Call Report (MCR) or financial statement.

#### **Background**

On May 1, 2015 SRR solicited public comments on the [Uniform NMLS Licensing Forms and Mortgage Call Report](#). The comment period ended on June 1, 2015 and all public comments were posted on the [NMLS Resource Center](#). The Request for Public Comment contained proposed changes to the attestation language as part of Company Form (MU1), Branch Form (MU3) and Individual Form (MU4 and MU2) filing submission. The Forms Working Group (Addendum A), comprised of state regulators, reviewed the public comments received and made recommendations to the NMLS Policy Committee (NMLSPC)<sup>3</sup> for consideration. Based on the initial comment period, SRR indicated that proposed changes would go out for a second 30-day comment period prior to finalization by the NMLSPC.

On July 21, 2015, SRR solicited the second [Request for Public Comments](#) on the Uniform NMLS Licensing Forms and Mortgage Call Report which contained proposed changes that resulted from the initial open comment period and regulator discussions. Based on [Comments Received](#), and additional recommendations made by the SRR Lawyers Committee and approved by the Forms Working Group,

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

<sup>2</sup> Information about the State Regulatory Registry LLC can be found at <http://www.csbs.org/srr/Pages/default.aspx>

<sup>3</sup> To assist it in making decisions and handling operational matters, the SRR Board of Managers created the NMLS Policy Committee (NMLSPC) which is comprised of 11 state regulators. The NMLS Policy Committee provides SRR a mechanism to make policy decisions for NMLS with regards to its impact on meeting state licensing regulations. Decisions are made after considering input from NMLS Participating State Agencies, licensees and industry. The roster of the NMLSPC can be found at <http://mortgage.nationwidelicencingsystem.org/about/Documents/2016.2.1%20NMLS%20POLICY%20COMMITTEE%20LIST.pdf>

on December 23, 2015, the NMLSPC published the [Response and Approved Changes to the Licensing Forms and Mortgage Call Report](#).

The final changes published on December 23, 2015 contained a change to the Attestation language that was not contained in either the May 1, 2015 nor the July 21, 2015 comment periods. Concerns were raised at the NMLS Ombudsman Meeting on February 19, 2016 that industry had not had an opportunity to comment on this change to the Attestation language and that the change will have substantive impact on licensee's ability to comply. For this reason, SRR has decided to provide this public comment period solely on this specific change to the Attestation language.

Initially the approved changes to the Uniform Licensing Forms (Forms) were slated for implementation in the second quarter of 2016. Due to industry requests to allow additional review of the amended attestation language, changes to the Forms have been retargeted for a mid-September 2016 implementation date. All other changes to the Forms outlined in the response posted on December 23, 2015, will be implemented within NMLS as outlined in the [Approved Changes](#) document, with just the date of implementation being changed to mid-September 2016.

## **Request for Public Comments**

On behalf of the state regulatory agencies using NMLS, SRR is seeking comment on the following proposed changes to the Company and Branch filing attestation:

### Uniform NMLS Licensing Forms

#### **I. Attestation Language**

During the initial Request for Public Comment Period, between May 1, 2015 and June 1, 2015, some state agencies voiced concerns that the attestation language as part of form filing submission is inadequate. While companies may utilize third-party firms to assist with licensing compliance, NMLS Policy states that filing attestation and submission should be completed only by an employee of the company who is authorized to attest on behalf of the company. To reduce attestation by third-party firms, such as compliance personnel who are not employees of the entity licensed within NMLS, the NMLSPC recommended strengthening Company and Branch attestation language. The recommended language to strengthen the Company and Branch attestation language was included in the second [Request for Public Comments](#).

Issue: Following approval of the revised Company and Branch attestation language by the NMLSPC, published on December 23, 2015, industry voiced concern with the removal of "*...to the best of my knowledge, information, and belief...*" from language proposed to be presented to company users within the second Request for Public Comments. The concern from the state regulators is that inclusion of "*...to the best of my knowledge, information, and belief...*" may allow applicants to argue that the attesting individual did not have the requisite "knowledge, information, or belief" and therefore has not knowingly made a false statement of fact.<sup>4</sup>

As outlined in the Approved Changes document, companies will still be given a new user role for Organizational Users that will allow designated third party users to assist with completing company and branch filings without having the ability to attest and submit the filing. This new user role will be made available mid-September 2016. Additionally, in September 2016 SRR will update the User Profile page of Company/ Institution Account Administrators and Organizational Users to require imputation of

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<sup>4</sup> See Addendums B, C, and D for current and former versions of the attestation language.

“Title/Position.” This new data field will be pulled into the attestation language presented to company and branch filers upon filing attestation and submission.

### **Request for Public Comments**

On behalf of the state regulatory agencies using NMLS, SRR is seeking comments from the public on the content of the Company and Branch attestation language. All responses will be reviewed by the NMLS Licensing Forms Working Group, the SRR Lawyers Committee, and the NMLSPC. SRR is particularly interested in input on the inclusion of “...to the best of my knowledge, information, and belief...,” to the Company and Branch attestation language.

Comments are requested to be limited to the content and use of the Company and Branch attestation language. Persons submitting comments must include their contact information. Comments received, as well as the submitter’s name and company or organization (if applicable), will be posted on the NMLS Resource Center for public view. Comments submitted without contact information will not be considered.

All comments will be reviewed by the SRR Lawyers Committee and the Forms Working Group comprised of state regulators and discussed with all state regulators. The regulator working group will consult with industry representatives including the SRR Industry Advisory Council and Industry Development Working Group during the comment evaluation period. The recommendations for proposed changes from the regulator group will be sent to the NMLSPC for evaluation and approval or rejection.

Persons submitting comments are encouraged to provide these comments electronically via email to: [comments@csbs.org](mailto:comments@csbs.org).

Comments may also be submitted in physical form to:

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

### **Comment submission deadline: April 28, 2016**

SRR will provide 30 days for public comments on the Company and Branch attestation language.

SRR will publish the final approved changes to the Company and Branch attestation language for System integration mid-September, 2016.

## Addendum A

### NMLS Licensing Forms Working Group

Nancy Burke	New Hampshire Banking Department
Lorenda Lillard	Washington Department of Financial Institutions
Michelle Hickman	Wyoming Division of Banking
K.C. Schaler	Idaho Department of Finance

## Addendum B

### Current Company and Branch Attestation Language

I <<NAME>>, of <<COMPANY>>, (Applicant) on this date <<SYSTEM DATE>>, swear (or 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:

- (1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law;
- (2) To the extent any information previously submitted is not amended, such information remains accurate and complete;
- (3) To the extent any information submitted is part of an advance change notice with a delayed effective date, such information is accurate and complete as of this submission;
- (4) That the jurisdiction(s) to which an application is being submitted may conduct any investigation into the background of the applicant, and any related individuals or entities, in accordance with all laws and regulations for purposes of making a determination on the application;
- (5) To keep the information contained in this form current and to file accurate supplementary information on a timely basis; and
- (6) To comply with the provisions of law, including the maintenance of accurate books and records, pertaining to the conduct of business for which the applicant is applying.

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.

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.

## Addendum C

### Initially Proposed Company and Branch Attestation Language

\*Highlights indicates language additions or movement in placement

\*Red strikethrough indicates language removal

I <<NAME>>, of <<COMPANY>>, (Applicant) on this date <<SYSTEM DATE>>, swear (or 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:

- (1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law;
- (2) To the extent any information previously submitted is not amended, such information remains accurate and complete;
- (3) To the extent any information submitted is part of an advance change notice with a delayed effective date, such information is accurate and complete as of this submission;
- (4) That the jurisdiction(s) to which an application is being submitted may conduct any investigation into the background of the applicant, and any related individuals or entities, in accordance with all laws and regulations for purposes of making a determination on the application;
- (5) To keep the information contained in this form current and to file accurate supplementary information on a timely basis; and
- (6) To comply with the provisions of law, including the maintenance of accurate books and records, pertaining to the conduct of business for which the applicant is applying.

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.

~~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, <<NAME>>, am employed by/an officer of <<COMPANY>>, and am authorized to verify the foregoing responses on its behalf. The information set forth herein was collected by others, and such information is not necessarily within my personal knowledge. Nevertheless, I solemnly declare and affirm under the penalties of perjury that I have reviewed the foregoing responses, and am informed and believe that the foregoing responses are true and correct to the best of my knowledge, information, and belief.

## Addendum D

### Initially Approved Company Attestation Language

\*Highlights indicates language additions or movement in placement

\*Red strikethrough indicates language removal

~~I <<NAME>>, of <<COMPANY>> (Applicant) on this date <<XXX>> swear (or 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:~~

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:

- (1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law;
- (2) To the extent any information previously submitted is not amended, such information remains accurate and complete;
- (3) To the extent any information submitted is part of an advance change notice with a delayed effective date, such information is accurate and complete as of this submission;
- (4) That the jurisdiction(s) to which an application is being submitted may conduct any investigation into the background of the Applicant, and any related individuals or entities, in accordance with all laws and regulations for purposes of making a determination on the application;
- (5) To keep the information contained in this form current and to file accurate supplementary information on a timely basis; and
- (6) To comply with the provisions of law, including the maintenance of accurate books and records, pertaining to the conduct of business for which the Applicant is applying.

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.

~~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.~~

On this <<SYSTEM 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.