



RESPONSE TO COMMENTS AND APPROVED SRR PUBLIC COMMENT POLICY

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On August 30, 2016, the State Regulatory Registry (SRR), on behalf of the state regulatory agencies using NMLS, solicited [public comments](#) on the adoption of a policy governing the procedures and processes for requesting and considering public comments on issues related to the Nationwide Multistate Licensing System (NMLS or System). The comment period ended on October 31, 2016 and all public comments received were posted on the [NMLS Resource Center](#). The Request for Public Comment proposed a formal policy to ensure effective notice and procedures for a period of public comment on certain functionality, reporting, or policy changes (individually and collectively, “updates”) being considered for adoption by SRR that may significantly impact users of NMLS. The policy outlined the roles, responsibilities, and procedures for this process to ensure the public has effective notice and the ability to submit timely and meaningful comment on proposed NMLS updates.

Responses to Comments

On behalf of the state regulatory agencies using NMLS, SRR sought comments from the public on the adoption of a policy governing the procedures and processes for requesting public comments on issues related to NMLS. SRR was particularly interested in input related to the purpose of the Public Comment Policy, applicability of the proposed policy, roles and responsibilities, effective and sufficient notice, the collection and receipt of public comments, consideration of comments received, and the general applicability of when a requirement or policy is ultimately adopted.

At the end of the public comment period, SRR received responses from eight individuals and organizations. Commenters included four non-depository financial services companies, one law firm, and three associations representing the mortgage and consumer finance services industry.

The following is a summary of the major topics raised in the comments and SRR’s responses to those comments.

Purpose of the SRR Public Comment Policy

Commenters expressed support of a policy governing SRR’s public comment process and the increased transparency it creates. One commenter commended SRR for issuance of 24 requests for public comment on issues related to policy, functionality, and enhancements of NMLS since 2008. All commenters expressed the belief that formalizing the process to establish enhanced procedures and processes for publishing requests, considering comments, and issuance of final policies will be beneficial to all NMLS stakeholders.

1. Applicability and Roles and Responsibilities

Determining which NMLS changes or enhancements rise to the level of the issuance of a formal request for comments was discussed by most of the commenters. The proposal states, any updates that impact outside parties and are determined by the NMLS Policy Committee (NMLSPC) including, but not limited to, major NMLS functionality changes, call report updates, uniform form changes, and fee changes will be subject to a comment process.

Comments included: (1) Specific examples of items excluded should be given and a written finding by a key official specifying the reasons for the exclusion should be required; (2) changes that would result in any new information being added or required for any record should always require notice, comment and justification; (3) questioning whether each issue that falls under the above list will always be issued for public comment, or only when the NMLSPC determines so.

In general, all commenters agree to the applicability of changes that warrant notice of public comments. One commenter mentioned that the proposed policy does not adequately define what warrants public comments with the NMLSPC having discretion to decide what needs public comment or if the issue does not impact usability of NMLS. Another commenter provided a suggestion on the wording of the “Applicability” section to address situations where the NMLSPC determines if public comment is needed: “as a general matter, any updates affecting outside parties are covered by the policy.”

One commenter requested that any changes made to the licensing forms should always require notice and comment, without any discretion on the part of the NMLSPC as to whether such an update requires public comment.

One commenter noted appreciation of SRR including industry representatives in the NMLS working groups, but mentioned that there are no specifics about the considerations that will govern the inclusion of industry representatives in such groups. The commenter suggested including industry stakeholders unless there is a determination made that such participation would not be useful. It was also suggested that the working groups should be required to establish a goal and work plan with a timeline. Another commenter questioned who ultimately approves the policy, the NMLSPC or the SRR Board of Managers.

One commenter also raised questions regarding the general governance processes of SRR when making final decisions on NMLS policies and requirements.

SRR Response

A review of the prior system policies and changes that have been the subject of public comment requests illustrates that SRR consistently issues a wide range of both general policies and system changes and enhancements for public comment prior to implementing those policies or enhancements. As noted in the policy, major functionality changes, call reports (which would include any new reporting requirements that may arise such as the upcoming MSB Call Report), and all form and fee changes have always been, and will continue to be, adopted only after consideration of public comments. The licensing forms and mortgage call report are automatically issued for public review every two years.) These system changes that always require a comment request include new information being required to be submitted by users.

Given the vast array of system enhancements to existing functionality that are included in system releases each year, it is not feasible for a written statement to be issued on every change as to why the NMLSPC believes the change does not rise to the level of warranting a request for comments. Likewise, beyond the above list of the types of system changes that would benefit from, and generally require, public comment, it is impossible to provide a list of specific changes that will always require comment, other than to clearly state that any changes or enhancements that fall into those broad categories (form changes, call report or other reporting requirements, fee changes, etc.) will always be the subject of a request for public comments without any discretion to not so from the NMLSPC.

Changes to NMLS or to the forms and reporting mechanisms contained in the System are developed in a systematic manner that gathers and uses information from many sources including comments and views derived from the Ombudsman meetings, feedback from the Industry Development Working Group (IDWG), the Large Institutions Working Group (LIWG), ad hoc working groups, visits to agencies and industry system users, and the Industry Advisory Council (IAC). These groups, particularly the IDWG and LIWG, are regularly informed of all system development items being discussed and worked on and are given an “early view” of system changes. In a typical year, there may be eight scheduled NMLS Releases of new and enhancement functionality, each of which may

include major issues such as new development of electronic surety bond functionality, as well as numerous other enhancements. The contents of all upcoming and issued releases are posted on the NMLS Resource Center along with the long-term development roadmap. We are confident that given the constant outreach on a variety of issues, and the input from the wide range of system stakeholders who are on our standing committees, we are able to identify any new policies, changes, or requirements that would benefit from a formal request for additional input from industry. The intersection between the regulator working groups, industry working groups, the NMLSPC and SRR staff serve as an efficient litmus test that helps in making the decision about which issues or changes will benefit from formally reaching out to the industry for comments.

With regard to the governance processes of SRR, the [SRR Annual Report](#) which is published each year in February, contains the SRR organization chart and descriptions of the makeup and responsibilities of the SRR Board of Managers, NMLSPC, and SRR Lawyers Committee. The report also details the roles of various working groups and the System development process. While many of the working groups may be established with only regulator members, the initial efforts and finding of any such groups are always conveyed to industry groups through one or more of the above noted channels and once new functionality is proposed, those groups often expand into ongoing meetings to ensure the needs of all users are met. Two examples are the Mortgage Call Report working group and the Electronic Surety Bond working group, both of which meet regularly to comment on enhancements and to pinpoint problem areas.

The NMLSPC is the body that makes decisions regarding system operations and policies that govern the NMLS. Ultimately, the SRR Board of Managers has the authority to override any decision of the NMLSPC however, the only system-related matter that is solely governed by the Board is the fee structure of NMLS.

SRR prioritizes efforts to seek out and obtain input from all system stakeholders and provides numerous opportunities for interested parties to do so. This policy is a useful guide and protocol for determination as to when a request for public comments will be released which is determined by the effect of a proposed change or enhancement (form changes, report changes, etc.) or through input received through our normal communication processes.

2. Effective and Sufficient Notice

Comment Period: The majority of the commenters requested a more definitive approach as to when and under what circumstance a comment period of less than 60 days would be permitted. While recognizing there may be instances where such a decision may be warranted, commenters felt that the proposed policy was unclear and they requested SRR to establish a more defined standard as to how such a decision would be made. Two commenters suggested that the CSBS' General Counsel be required to sign-off on a shortened comment period and that the reasons for any change from a 60-day comment period should be made public in writing. Two commenters suggested that if a shorter time period is imposed to address a time sensitive matter, the resulting requirement should be adopted on an interim basis until it is proposed, commented on, and approved through the standard process.

Two commenters requested a minimum comment period of 90 days instead of 60 days, noting that 60 days is too brief, particularly if the matter is complex.

SRR Response

The final policy has been amended to clarify the standard time period for comments requests is 60 days and language has been added to require the agreement of the CSBS General Counsel and the

NMLSPC in order to set a shortened time for requests. Also, when a shorter time period is authorized, the resulting policy or requirement will be adopted with the caveat that the policy will be re-proposed, commented on, and approved through the standard process including a 60-day comment period.

Notice to Public: One commenter expressed support of email notifications to industry informing of specific comment deadlines. This commenter suggested including an opt-in email list, which would permit interested parties to submit their information to receive an electronic notice of all issues or items set for public comment. A few commenters suggested the issuance of a press releases to the real estate finance trades to announce items or issues up for public comment. A request was also made for publication of advance notice of future proposals in order to provide industry and stakeholders additional opportunities to focus attention on specific issues. One commenter specifically asked that SRR more closely adhere to the federal Administrative Procedures Act and conduct stakeholder impact studies and cost-benefit analyses. Another commenter noted that new requirements need to take into consideration their burden or impact on small business and the legal authority for the action.

One commenter noted that the NMLS Annual Conference and the AARMR Conference are good venues for discussion of upcoming requests for public comment and any that may be current.

Two commenters proposed to additionally allow public hearings for all topics SRR Requests for Public Comment. They believe this would allow interested parties to provide their comments directly to SRR and allow for the exchange of ideas and viewpoints that may not adequately be captured in a written submission.

SRR Response

SRR agrees with several of these proposed changes to the SRR Public Comment Policy. The policy has been amended to:

- Require the issuance of a press release when a request for public comments is posted.
- Publish advance notice of the publication of a request for comments on the NMLS Resource Center and announce the notice at the NMLS Ombudsman meetings as soon as a determination has been made that such a request will be developed.
- Provide, once a request for public comment has been issued, an opportunity for open discussion on the topics raised at either an NMLS Ombudsman meeting or through a scheduled conference call, whichever avenue is available during the comment period. However, all final comments must be received in writing.

SRR does not implement state or federal laws or regulations which are the focus of the federal Administrative Procedures Act. System requirements are developed to implement processes supported by existing state law requirements that have been adopted in accordance with the administrative processes of each jurisdiction.

3. Collecting and Receiving Public Comments

All commenters either agreed with SRR's proposed approach for the collection and receipt of public comments, or provided no input.

4. Consideration of Comments

In SRR's review of comments received on a particular policy, two commenters noted the importance of ensuring NMLS does not adopt requirements that are potentially duplicative or are in conflict with other state or federal requirements.

Commenters supported SRR's commitment to transparency and frequent public discussions at NMLS Ombudsman or similar meetings and suggested that it be made more formal in the Proposed Policy.

SRR Response

SRR commits to make every effort to avoid unnecessary duplication and any conflict with existing law when adopting any enhancement of change to NMLS. One of the reasons for posting a request for public comments is to collect information regarding not only how a new change or system enhancement should operate, but what impact the adoption would have on our various system users and other stakeholders. SRR's commitment to transparency in operations and system advancements includes taking all opinions into consideration prior to making any final decisions. As noted above under the Notice to Public section, discussions held at the NMLS Ombudsman meetings are often an integral role in the overall comment development process and SRR commits to scheduling those discussions.

5. Adoption of a Rule or Policy of General Applicability

Several commenters requested that when a policy decision is made, the effective date after rule adoption be at least 60 days (one commenter) or a minimum of 90 days (two commenters) after the policy is approved to allow for full and effective compliance from industry. The time period should be dependent upon the complexity of internal programming that a system enhancement may require or the existence of federal rule implementation or other issue that could affect industry's ability to reasonable implement.

SRR Response

Historically, implementation timelines resulting from SRR Requests for Comments have varied mainly because many of the proposal topics are upcoming functionality such as the MSB Call Report or Electronic Surety Bonds, and the comments are requested long before the functionality is deployed (often more than one or two years). Other topics such as form changes or changes to existing functionality may have a shorter time period for implementation but have not been less than 90 days. Further, any changes made to the MCR have a 6-month implementation period. SRR commits to providing sufficient time for system users to prepare for any operational changes but falls short of setting a specific time line for a "one size fits all approach." For instance, there is no reason for this policy to have an effective date later than immediately upon publication as it imposes no additional burdens on system users or other stakeholders.

6. Terminology

Two commenters noted their opposition to the use of the term "rule." "To call NMLS requirements "rules" should be the subject of further discussion and legal review..." The terms policy, requirements, guidelines, or procedures are more appropriate.

SRR Response

SRR has no objection to this point and deleted the term "rule" throughout the policy. SRR operates "behind state law," meaning that it is the states that enact the laws and regulations that set the

licensing requirements, reporting requirements and all other responsibilities and requirements for state licensees. NMLS is the system through which those requirements are acted upon, recorded and maintained, but the System does not and cannot override or supersede any state authority.

7. Request for More Extensive Reporting on SRR's Financial Status

Although the request for comments specifically requested comments on only the issue of the proposed public comment request procedures, one commenter stated that they appreciate SRR promoting transparency and, "in that spirit," would like to see a detailed breakdown of SRR's financial to "provide a comprehensive picture of SRR's operations and the extent to which different states and industries use the System."

Specifically, they are requesting: (i) an in-depth accounting of revenue broken down by industry segment, to include distinct categories for both vehicle retail installment sales and other retail sales finance, both payday lending and traditional installment lending, both first and third party debt collection, and mortgage; (ii) revenue broken down by state; (iii) a more in-depth examination of program expenses than is currently included in the financial audit data, including a more robust breakdown of expenses for system operations and professional services, and an accounting of all legislative efforts at both the state and federal levels; and (iv) an analysis of financial growth to revenue and expenses on a 3, 5, and 10-year basis.

SRR Response

This request for fee information is outside of the scope of this requests for comments, so a response will not be included in this document and SRR will direct the question to the SRR Board of Managers. It should be noted that SRR publishes its annual audited financial statements on the NMLS Resource Center, all system fees are clearly noted on the website, and any proposed fee increases must be first issued for public comment and are decided upon by the SRR Board of Managers.