

RESPONSE TO COMMENTS RECEIVED DURING THE SRR COMMENT PERIOD ON FEDERAL REGISTRY FEES OCTOBER 14, 2010 TO NOVEMBER 12, 2010

On October 14, 2010 the State Regulatory Registry LLC (SRR) published for public comment the proposed fees for the Nationwide Mortgage Licensing System & Registry (NMLS) in connection with the registration of federally regulated mortgage loan originators (MLOs). The deadline for submitting comments was November 12, 2010. The following is a summary of the comments received with a response.

Background

Section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (“SAFE Act”)¹ requires the federal banking agencies² jointly through the Federal Financial Institutions Examination Council and together with the Farm Credit Administration (collectively, the “Federal Agencies”) to develop and maintain a system for registering MLOs employed by federally chartered or insured institutions or b) their owned and controlled subsidiaries that are federally regulated.

On July 28, 2010, the Federal Agencies published the “Registration of Mortgage Loan Originators Final Rule” (“Final Rule”) implementing the SAFE Act’s requirements for federally regulated MLOs.³ The Federal Agencies have contracted with SRR to modify NMLS to accommodate the federal registration process for the purposes of accepting and maintaining the registration of MLOs.

The SAFE Act and/or the Final Rule require federally registered MLOs to:

- Register with NMLS and obtain a unique identification number;
- Submit MLO fingerprints to NMLS for a criminal background check;
- Submit certain information regarding personal history and experience to NMLS;
- and
- Update and annually certify an MLO registration.

In addition, the Final Rule mandates that institutions employing federally registered MLOs must maintain a registration in NMLS and manage the registration process.

¹ The SAFE Act is Public Law 110-289 (PL 110-289) and information can be found at: <http://mortgage.nationwidelicencingsystem.org/SAFE/Pages/default.aspx>

² The Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the National Credit Union Administration.

³ The Final Rule can be found in the Federal Register at 75 FR 44656 (July 28, 2010); the Final Rule’s Supplementary Information section was reprinted at 75 CFR 51623 (August 23, 2010) with corrected footnote numbering.

NMLS Federal Registration Fees

Under the SAFE Act, NMLS is allowed to charge “reasonable” fees for carrying out its responsibilities.⁴ In the Final Rule, the Federal Agencies also indicated that NMLS may charge reasonable fees to implement and maintain the NMLS Federal Registry.⁵

The NMLS federal registration fees, as finalized by the SRR Board of Managers (Addendum A) mirror in amount and structure the NMLS processing fees charged to state-licensed users of NMLS. These NMLS processing fees for state-licensed entities were set and have remained unchanged since the NMLS launched in January 2008.

The Federal Agencies provided no development funds to cover the significant system modifications made in order to accommodate the federal registration process. SRR will cover these development costs over time through the NMLS federal registration fees. It is important to note that the fees to be charged to MLOs and their employing institutions under the NMLS Federal Registry are determined and collected by SRR, not by any of the Federal Agencies.

Responses to Comments

At the end of the public comment period, SRR had received submissions from 51 commenters concerning the proposed NMLS Federal Registry fees. Commenters included depository institutions, state-licensed mortgage companies, industry trade groups and individuals.

The comments were reviewed by SRR’s Board of Managers. The following is a summary of the major topics raised in the comments and SRR’s review and response to those comments.

I. Impact on State-Licensed Companies or Mortgage Loan Originators

Eight comments addressed the impact of the proposed fees on state-licensed companies or MLOs. Many of these commenters stated that state-licensed mortgage companies already pay substantial fees, whether it be NMLS processing fees or state licensing fees, and that additional fees are inappropriate.

SRR Response

The proposed fees for which SRR sought comment apply only to registered MLOs (i.e., federally regulated MLOs) and their employing institutions that are covered by the Final Rule described above. No fees described in this proposal would apply to solely state-regulated entities, and no change in fees applied to state-regulated entities is contemplated as part of this proposal.

⁴ PL 110-289, §1510

⁵ 75 CFR 51635

II. General Fee Level and Fee Structure

Twenty-two commenters addressed either the amount of the proposed fees in connection with registration of federally regulated MLOs or the overall structure proposed to assess those fees. Of those who commented on the fees, most commenters questioned the appropriateness of the proposed fees as well as the fees' structure. Eight commenters stated that they did not believe that enough information regarding the calculation of the fees was made available to adequately comment on the fees.

Fee Level

Thirteen commenters thought that the proposed fees were too high. Some commenters responded that institutions are already facing significant economic challenges and that additional fees assessed on institutions could negatively impact consumers, either through higher lending fees or fewer lending options. Other commenters expressed concern that these fees were excessive in light of what they considered the limited functionality of the Registry, either at initial registration or during subsequent renewals. Commenters requested that SRR take into account the compliance fees institutions are facing with respect to other recently enacted pieces of legislation or regulation. Conversely, three commenters responded that the proposed fees were either appropriate or too low.

SRR Response

The SRR Board of Managers recognizes that financial institutions face increasing economic and regulatory pressures and believes these fee levels limit the financial impact on institutions without compromising NMLS' ability to provide an effective and efficient means to satisfy federal registration requirements, both throughout the initial transition period and in subsequent years. The fees to be assessed under NMLS Federal Registration are equal in structure and amount to fees imposed by NMLS on state-licensed companies and individuals. The fees for NMLS Federal Registration will support a range of NMLS functional and operational costs, some which are indivisible from NMLS' operations as a state licensing system (such as the maintenance of a single record for MLOs and the issuance of a unique ID number) and others which may be specific to the NMLS Federal Registration (such as the two-factor authentication costs). These costs include, but are not limited to:

- Maintaining a secure, online ability for institutions and MLOs to create records on NMLS, file a registration, and maintain these records and registrations indefinitely;
- Providing ongoing access to NMLS by individuals and institutions in order that registration information can be updated by MLOs and institutions as required by the Final Rule;
- Maintaining inactive MLO registrations and institution registrations in NMLS so that individuals and institutions are tracked as they reenter the industry;
- Providing the Maryland-based NMLS Call Center to assist in the federal registration process;

- Developing defined reporting capabilities for institutions in NMLS to track MLO registration;
- Adhering to federal government data security requirements;
- Making registered MLO information publically available at no cost to consumers, as required by the SAFE Act;
- Developing ongoing upgrades to system functionality; and
- Providing training materials and other resources for institutions and MLOs concerning the federal registration process.

Additionally, NMLS Federal Registration fees must cover the development costs in modifying NMLS to accommodate Federal Registration in accordance with the requirements established by the Federal Agencies. The full development costs for the initial launch⁶ of the NMLS Federal Registry are still being incurred and will not be known until well into 2011.

Estimates as to how many institutions or MLOs will register through NMLS Federal Registration vary significantly and do not provide a reliable basis for volume or revenue projections. This is due to the fact that the federal registration of MLOs is a new requirement with no current data source that contains the number of MLOs; the interpretative nature of the definition of mortgage loan originator; and the uncertainty surrounding current mortgage origination market conditions.

Given these uncertainties, SRR believes that the NMLS processing fees that are currently charged to state-licensed entities are an appropriate starting point for NMLS Federal Registration fees. The SRR Board of Managers annually reviews NMLS processing fees against actual system costs and makes adjustments as necessary. The SRR Board of Managers will adjust NMLS Federal Registry fees in the future as necessary after reviewing the costs associated with maintaining the system.

The SRR Board of Managers faced similar uncertainty in revenues and costs when NMLS was launched in 2008. At that time, the Board established fees which were believed to be reasonable and, to date, has not had to adjust the NMLS processing fees.

Fee Structure

Nine commenters offered comments on the overall proposed fee structure. Some commenters disagreed with the proposal to assess the same base record filing and renewal fees on all institutions, regardless of size. These commenters stated that a single fee for all institutions unfairly impacts small community banks and credit unions and suggested that NMLS assess institution fees based on either asset size or number of MLOs.

⁶ "Initial Launch" covers the development of NMLS Federal Registration through the end of the 180 transition period under the Final Rule and modifications to NMLS Consumer Access to include NMLS Federal Registrant information.

Six commenters expressed concern with SRR's proposal to assess different MLO registration fees dependent on whether an MLO initially registers before or after July 1st in any given year. Some commenters questioned the need to charge the same fee for renewal as for initial registration due to the limited information collected at renewal. Two commenters noted that the proposed fee structure effectively assesses a \$60 fee on all MLOs in their initial registration year, regardless of when the registration actually occurs, and questioned the appropriateness of such a structure which appears to charge a renewal fee to late registering MLOs when no renewal takes place. One commenter suggested that the process of having MLOs renew in the initial year was more of a concern than the actual associated costs, and suggested that NMLS simply charge all MLOs a \$60 initial registration fee and registration to be structured such that MLOs could bypass renewals in 2011.

SRR Response

The NMLS processing fee structure is intended to be simple, and is designed to spread costs equitably over all users according to activity. For example, first time users, where activity includes system entitlement as well as registration, are charged an initial registration fee.

MLOs that change employment are charged an employment fee each time they move, while those that do not change employment do not incur this fee. SRR believes this structure is appropriate as one of the primary benefits of NMLS is tracking MLOs as they move around the industry.

All MLOs are charged an annual renewal fee that allows ongoing access to their record throughout the year without incurring a fee each time. SRR believes charging a renewal fee to cover ongoing updates will encourage (rather than penalize) compliance with the Final Rule's mandate that MLO registrations be updated within 30 days of any change to information contained in the filing while providing the necessary system revenue to maintain this ongoing access. The annual renewal fee covers all aspects of NMLS operations, including maintaining NMLS online securely throughout the year, reporting functionality, operating the NMLS Call Center, and ongoing system upgrades. SRR believes that charging an annual renewal fee once a year and not charging numerous fees throughout the year is a more efficient structure for both users and SRR.

Regarding comments suggesting altering the proposed institution fees, the SRR Board of Managers does not believe it can effectively structure institution fees in a way that differentiates institutions based on asset size, nor is NMLS equipped to perform the necessary monitoring to ensure that as institutions' assets sizes change, they are assessed the appropriate fee. Furthermore, the SRR Board of Managers believes the proposed fee structure appropriately takes into account institution size; i.e., institutions with larger numbers of employed MLOs pay more fees through higher cumulative MLO processing fees. While the institution's base record filing fee is flat, regardless of institution size, institutions with more subsidiaries and/or more MLOs will incur higher costs. The SRR Board of Managers believes assessing a

consistent fee across all institutions is thus fair and reasonable.

Regarding the fee structure for MLO registration and renewal processing fees, the SRR Board of Managers agrees with commenters who noted that this structure effectively imposes \$60 in registration fees on an MLO in his or her initial registration year. The initial registration fee anticipates the higher costs that the system incurs when a new user comes onto NMLS—including establishing an account, resources to understand the process, call center support and troubleshooting.

In response to one comment, the SRR Board of Managers is amending the structure of initial registration and renewal for MLOs for 2011 in acknowledgment of an anomalous circumstance that NMLS and MLOs face only in 2011. The Final Rule requires all MLOs to renew registrations every year, including the year of initial registration. The only exception provided in the Final Rule is for MLOs who initially register within six months of the end of the registration renewal period. Effectively, an MLO who initially registers after July 1st is exempt from renewal requirements in that same calendar year. It is anticipated that the 180-day transition period for all MLOs, during which MLOs may continue conducting business, will cross over July 1 in 2011.

While the effect on fee revenue to NMLS is neutral in the above scenario, if institutions wait until after July 1, 2011 to register their MLOs so as to avoid renewal in 2011 it may put unnecessary strain on institution and NMLS resources in the final month of the 180-day transition period.

Thus, in response to a comment received, the 2011 NMLS Federal Registry processing fees are to be restructured as follows:

1. The initial registration fee in 2011 for all MLOs will be \$60, regardless of when the registration is completed; and
2. NMLS will not assess a renewal fee in 2011; however, registrations completed prior to July 1, 2011 will need to be renewed in 2011, as required by the Final Rule.

NMLS Federal Registry fees will revert back to the proposed NMLS Federal Registry fee structure and amounts on January 1, 2012.

III. Transparency in SRR Operations and Finances

Several commenters expressed a concern that the proposal did not include sufficient information for the evaluation of the reasonableness of the proposed fees. Additionally, a few commenters expressed the need for greater transparency in NMLS operations.

SRR Response

As noted above, the uncertainties of development and operational costs as well as the number of MLOs make it impossible for SRR to make reliable predictions. Thus the SRR Board of Managers has opted for the same fee amounts and structure that are currently used in connection with NMLS operations for state-licensed entities.

Much of what SRR has undertaken over the past three years has been wholly innovative with little or no precedence in terms of estimating costs and no certainty in gauging revenues. The model that the SRR Board of Managers has used to date in developing system fees has been to institute fees that are expected to cover development and operating costs and then evaluate these fees on an annual basis based on actual revenue and cost information. Before finalizing any fee change, proposals are issued inviting public comment. The SRR Board of Managers will continue to undertake this approach with regard to the NMLS Federal Registry fees.

SRR takes transparency in operations seriously and in 2008 developed a process for public comment for all major decisions. In 2009 the SRR Board of Managers established an Ombudsman for industry and regulators to discuss licensing and/or NMLS matters. All proposals for public comment, with comments received and a response to the comments, are publicly available on the NMLS Resource Center.

Financial and operational information about SRR is available in our annual reports [www.csbs.org/mortgage/Pages/AboutSRR.aspx]. Additionally, SRR publishes its audited financial statements on an annual basis. The financial statements are available online at [www.csbs.org/mortgage/Pages/AboutSRR.aspx].

IV. Two-Factor Authentication Annual Subscription Fee

Nine commenters offered comments regarding the proposed annual subscription fee for the second factor of authorization required for institution users who have access to multiple registered MLOs' personally identifying information. These comments questioned the amount of the subscription fee, the need for such a subscription, and the vendor selection. One commenter suggested that institutions be provided the opportunity to acquire a single subscription at the parent bank level that allows the administrative team members to access records at both the parent bank and subsidiary levels.

SRR Response

Federal data security guidelines require that all individuals who potentially have access to multiple individuals' personally identifying information through NMLS have two factors of authentication in order to access the Federal Registry. The only individuals covered by this requirement are institution administrative users, federal agency users, and support users (e.g. NMLS Call Center employees). Individual MLOs who only have access to their own information are not subject to this requirement and will not need two factors of authentication in order to access NMLS.

The annual subscription fee covers three main expenses:

1. The service provided by the vendor selected to provide independent user authentication;
2. The development costs to integrate two-factor authentication into NMLS; and
3. Annual operating costs associated with maintaining this service.

In developing the proposed fee, the SRR Board of Managers used conservative estimates for the number of two-factor authentication subscribers. Based on information provided by various institutions to SRR subsequent to the proposed fees' publication, the SRR Board of Managers is confident that an annual subscription fee of \$55 is a more reasonable fee to ensure that associated costs are adequately covered.

The NMLS Federal Registry will require that each institution user account be authenticated separately. It is SRR's understanding that allowing multiple individuals at one entity to share a subscription would violate federal data security guidelines.⁷ As a result, SRR cannot accommodate the request to develop a single two-factor authentication subscription at the parent institution level.

V. Criminal Background Check Fees

Seven commenters provided comments on the proposed criminal background check fees. Five commenters questioned the appropriateness of charging this fee to institutions who may already be engaged in the process of collecting fingerprints. Two commenters disagreed with the higher proposed fee for fingerprints via paper, noting that this higher fee could disproportionately impact small banks in rural areas.

SRR Response:

The Final Rule requires that all MLOs submit fingerprints to the NMLS Federal Registry for the purposes of conducting a criminal background check. SRR has established a nationwide network of fingerprint capture locations, including many local police stations in rural areas, to accommodate state-licensed MLOs and has charged state-licensed MLOs the same fees proposed for federally regulated MLOs for this service.

The SRR Board of Managers is confident that these fees fairly and reasonably recoup the costs associated with conducting a fingerprint-based background check in a manner that is convenient to the MLO. The SRR Board of Managers recognize that MLOs in more rural areas may need to rely on fingerprints submitted on paper ("print cards"), but believe the additional charge adequately covers the increased expenses associated with print cards. SRR's experience to date is that print cards are deemed illegible by the Federal Bureau of Investigation at a much higher rate than electronic fingerprint files, and the SRR Board of Managers notes that MLOs are not charged again if appropriately submitted prints are deemed illegible.

⁷ OMB Memo M-04-04, E-Authentication Guidance for Federal Agencies, 16 December 2003, and NIST SP 800-63-1, Electronic Authentication Guidance, 8 December 2008 (DRAFT)

The SRR Board of Managers also recognizes that many institutions already conduct background checks as part of their normal employment process. The Final Rule requires that MLOs submit fingerprints to the NMLS Federal Registry regardless of their employing institutions' existing background check procedures and that, once submitted to the Registry, fingerprints may be used by that MLO to satisfy the SAFE Act's background check requirements for up to three years. In view of the fact that these prints can be used by another federally regulated institution or by a state regulator as part of the licensure process, the SRR Board of Managers believes it is critical that all prints captured by NMLS be done so under consistent standards. More information on options available to institutions and MLOs for the purpose of satisfying the fingerprint submission requirement can be found on the NMLS Resource Center.