



NMLS Ombudsman Meeting

at the 2024 NMLS Conference & Training in San Antonio, Texas

February 15, 2024, 9:00 a.m. to 12:00 p.m. CST

Agenda

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| 1. <i>Welcome & Updates</i> | Jim Payne, NMLS Ombudsman, Kansas Office of the State Bank Commissioner |
| 2. <i>NMLS Guidance, System Updates and Regulator Communication - Exhibit 1</i> | Amy Greenwood-Field, McGlinchey |
| 3. <i>Trust/Primary Bank Account and Financial Statements for Start-Up Companies - Exhibit 2</i> | Trish Lagodzinski, Ankura (formerly Chartwell Compliance) |
| 4. <i>2024 NMLS Ombudsman Meeting Topics - Exhibit 3</i> | Kathy Tomasofofsky, Money Services Business Association |
| 5. <i>MCR Issues and Data Privilege - Exhibit 4</i> | William Kooper, Mortgage Bankers Association |
| 6. <i>Data Submitted by Licensees via the Mortgage Call Report - Exhibit 5</i> | Bob Niemi, Weiner Brodsky Kider PC |
| 7. <i>Open Discussion</i> | All |

There will be a 15-minute break halfway through the meeting.

The meeting will be in person only; no dial-in will be available.

***[Click here](#) for more information on the 2024 NMLS Annual Conference & Training.
Registration for the conference is not required to attend the NMLS Ombudsman Meeting.***

January 19, 2024

Mr. Jim Payne
NMLS Ombudsman
ombudsman@nmls.org

RE: NMLS Guidance, System Updates and Regulator Communication

Dear Ombudsman Payne:

I am writing to you in connection with a handful of issues where it appears that additional public guidance, training, and/or NMLS system updates would be beneficial.

1) NMLS Entitlement Issues

We recently experienced an issue with the NMLS entitlement process where a new company submission was rejected. This entity had been in existence for some time and had recently experienced a name change. While the formation documents provided as part of the NMLS entitlement package included the documentation of the name change along with the approval by the formation state's Secretary of State's office, because of the timing of the name change, the original IRS letter reflected the company's original name. Even though the company had applied for a name update with the IRS more than 60 days prior to the NMLS submission, name updates are not an IRS priority and, as such, no official IRS documentation reflected the name change. The company submitted information available as part of the entitlement request but that request was rejected.

When a NMLS entitlement rejection is received, there is no tracking created that the submitting entity can use to submit additional requested documentation. Instead, a complete new entitlement request must be made. In addition, the rejection language received from the system is not tailored to the submitted company request. While our firm had experience and contacts to discuss the situation outside of the entitlement process and to provide a letter of explanation with the next new account entitlement request, a new company without benefit of experienced counsel would not know how to resolve the rejection.

For entitlement rejections we suggest the following updates: (1) that the company rejection notification contain information that submission of a letter of explanation may be an acceptable way to resolve the reasons for rejection; (2) that the NMLS allow submission of additional information in response to a rejection notification without the need to create a new entitlement request; and (3) that frequently asked questions or other public guidance documents in connection with NMLS entitlement required items and submission issues be added to the NMLS Resource Center.

In addition, it appears that the current regulatory trend is to transition existing paper-based licenses to the NMLS. Where existing licensees are being transitioned we would suggest that NMLS obtain a list of the current licensed entities that are expected to be transitioning to the NMLS from the regulatory agency and that those

companies be routed to a subset of the current NMLS entitlement team for processing. For these types of entities, providing documentation of formation documents, current formation state certificates of authority, along with documentation from the regulator that the entity is a known licensed entity should provide proof enough for new account creation. Requiring known regulated entities to provide historical IRS information, which they may not routinely have available in their files and for which the IRS may not be able to timely provide, creates an unnecessary burden for transitioning entities that have previously held a license with a regulatory agency.

2) Processing Foreign Individual Credit and Background Checks

We are seeing continued confusion with respect to addition of foreign individuals in connection with criminal and credit checks, including regulators which request credit checks for non-US individuals in the system (which is impossible to process for an individual without a US Social Security Number). When issues arise, the call center often does not understand the base issues and cannot give advice that can actually resolve open regulatory requests. While at one point in time, the addition of a foreign individual as a control person of a licensed entity or a foreign company seeking US licensure may have been a rare occurrence, we are seeing requests to license foreign entities, foreign locations, and add foreign individuals to the NMLS with increasing frequency.

To prevent future instances of confusion surrounding the process to add foreign individuals to a NMLS record, including processing of credit and criminal background checks we suggest the following actions: (1) provide additional training to regulators, industry, and also NMLS call center staff regarding what items can and cannot be processed through the NMLS system; and (2) provide additional public facing guidance with respect to the issues surrounding foreign entities and individuals and steps to resolve such issues.

3) Financial Statement Submission Options

As the number of start-up entities seeking regulatory licensure increases there is a need for the NMLS to allow submission of additional financial statement types. The option needs to be available to submit "Annual/Initial" and YTD financial statements for both a parent entity as well as for the licensee/applicant entity.

For applicant entities that are wholly owned subsidiaries of parent entities that have audited financial statements, often regulators will allow parent statements to be submitted in connection with an initial application. This is especially true for new entities seeking initial licensure and will become more important as more states adopt the Money Transmitter Model Law which contains a provision to allow acceptance of parent audited financials under certain circumstances.

Under current system limitations, if a regulator has system setting in place to require an audited financial statement type reflecting a certain level of net worth, and the regulator offers the option of submission of a parent financial statement, the only way to clear the system set financial statement deficiency is to resubmit an "Annual/Initial" financial statement with the parent entity's financial information. This is problematic where the applicant entity has provided unaudited initial statements with other regulatory applications. While an amendment submission providing parent entity financial information will clear system set financial statement deficiencies, regulators that previously reviewed financial statements may be confused as why parent statements are now being provided. There is no current option in the system to submit two financial statements for the same time period.

We suggest that the ability to submit multiple financial statement types for the same time period be added to system enhancements in the near future.

4) **Advance Notification of Regulatory Changes in Interpretations**

We have seen a recent increase in the number of regulator requests made either via license item to existing licensees or via blanket updates to NMLS checklists. While we understand that the majority of state financial services licensing laws are written broadly enough to give the regulatory agency discretion to ask for additional information in connection with making a licensing decision, it would be helpful if the regulatory agency provided ample advance notice to regulated industry of those items.

During the last Ombudsman meeting, we urged regulators to not only provide notification of such changes to their law or interpretations via their own public websites but to also share that information with their regulatory associations, including with NMLS. Since that discussion, we have noted instances where regulatory agencies have: (1) added new requirements applicable to entities holding specific license types during the renewal window without advance warning; (2) asked for proof of compliance with certain federal law provisions where such compliance is not normally appropriate for a specific business type; and (3) updated new application checklists without also notifying existing licensees of a license requirement change. In all of these instances, there was not an accompanying state law change that would have provided notice to licensees that regulatory expectations may be different than in the past. As such, we are reiterating our previous request at this time.

I appreciate your time and consideration of this submission and look forward to discussing these issues further at the upcoming Ombudsman meeting in San Antonio.

Sincerely,

McGlinchey Stafford PLLC

A handwritten signature in blue ink that reads "AGreenwood-Field". The signature is stylized, with the first letters of the first and last names being capitalized and prominent.

Amy Greenwood-Field

Jim Payne, NMLS Ombudsman
Conference of State Bank Supervisors
1300 I Street NW, Suite 700 East
Washington, DC 20005

January 19, 2024

RE: Trust/Primary Bank Account and Financial Statements for Start-Up Companies

Dear Ombudsman Payne:

In response to your request for discussion topics for the 2024 Ombudsman Meeting at the NMLS Annual Conference and Training, there are two pressing issues that are impeding the licensing process for our clients which we believe would be relevant to address.

- Obtaining a Trust/Primary bank account for money transmission.
- Financial requirements for start-up companies.

While not a technical NMLS issue, obtaining an MSB/Trust Account is a challenge for many companies and an impediment to licensure for applicants. Would the states consider reviewing an application wherein the application has a pending MSB bank account application under review and/or possibly consider a conditional approval? Banks are generally more amenable to opening an MSB/Trust account if the prospective applicant has a money transmitter license, even with a condition of approval which stipulates licensed activity cannot begin until the MSB/Trust account is approved.

Regarding financial statements for start-up companies, several states mention that unaudited and/or certified unaudited financial statements are accepted during the application process. Examples of such states may be found in the Financial Statements Requirements Summary excel sheet from the NMLS Resource Center. However, currently the NMLS prevents submission of most applications without an audited financial statement uploaded into the Financial Statements filing section in the system, which can stymie the application process for smaller applicants. Is it possible to either remove the NMLS' systemic requirement regarding audited financial statements for new applicants for states not requiring them or remove them altogether?

Thank you for the opportunity to present these questions and concerns. Please do not hesitate to contact me at (301) 461-6483 or at trish.lagodzinski@ankura.com if you have any questions.

Sincerely,

Trish Lagodzinski

Trish Lagodzinski

Senior Director

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Money Service Business Association

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January 19, 2024

BY EMAIL

Jim Payne
NMLS Ombudsman
c/o Conference of State Bank Supervisors
1300 I St NW
Suite 700 East
Washington, DC 20005

Re: 2024 NMLS Ombudsman Meeting Topics

Dear Mr. Payne,

The MSBA appreciates the opportunity to bring to your attention the need for clearer Governance and Policy regarding the usage of the NMLS system.

The MSBA represents a diverse group of small to large companies that rely on the NMLS for licensing, reporting and renewals. Our purpose today is to enhance the system usage to support good governance and good public policy especially as it relates to communicating with licensees and with implementing the MTMA.

The MTMA was delivered to harmonize regulations in the states and was accomplished through the collaborative efforts of CSBS along with Regulators and Industry reps. The significant discussions and compromises were key in delivering a product that could be supported by all and benefit all.

We would like to highlight recent changes where these efforts can be undermined.

- 1) We would strongly encourage NMLS to collaborate with the Regulators to allow for appropriate advance notice of a change in regulatory interpretation that would require a licensee to update consumer facing documents. This past year, one regulator added a new requirement during the renewal window without prior notification to industry relating to appropriate wording for receipts. This request was counter to the regulation, was not driven by a legislative change and as a result, companies were caught off-guard.

The ability for companies to change their IT resources and priorities at year-end, without appropriate advance notice, is impossible.

2) We are continuing to see states that have adopted MTMA provisions that have also not appropriately updated their NMLS checklists and public facing guidance. Industry wants to be in compliance with current law but often needs some additional regulatory guidance to do so.

Recommended Changes:

Listed below are some of our suggested solutions for improving the procedures:

- 1> Renewal Checklists need to be provided by the regulator to NMLS in final format for posting no later than October 1st prior to the renewal window opening. Licensees rely on the information contained in the public checklists to prepare items for the renewal season. As noted above, adding new requirements to a renewal checklist may not allow for sufficient time for a licensee to become compliant with the regulator's request.
- 2> Creation of an Industry/Regulator Implementation Workgroup – As states implement MTMA adoptions, consistent handling of the law is essential for Industry and regulators to benefit from the original intent.

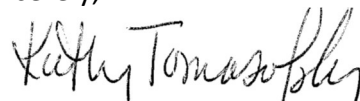
The NMLS system has modified its approach to enhancements and therefore many of the original intended system changes to manage provisions of the MTMA have been placed on a lower priority. The lack of updated system functionality is currently causing issues in connection with MSB Call Report reporting of permissible investments and in other areas, leading to unnecessary labor being spent to explain submissions made in the regular course of business.

A working group to address areas where we are beginning to see unintended implementation consequences related to MTMA adoptions, such as identification of Key Individual/Control Persons, MSB Call Report, Changes in Permissible investments, costs associated with expected audited financial statement reporting and foreign background checks need to be consistently addressed across the states. Collaboration to resolve unintended implementation consequences along with increased communication to all of Industry is essential.

The group can develop short-term solutions that can be communicated to all instead of each company working on the same issue with the regulator and receiving different guidance.

I look forward to discussing these issues during the upcoming Ombudsman meeting in San Antonio.

Sincerely,



Kathy Tomasofofsky, Executive Director
Money Services Business Association, Inc



Money Service Business Association

Phone: 201-781-2590

Email: info@msbassociation.org



January 19, 2024

Mr. Jim Payne
NMLS Ombudsman
Director of Examinations and Assistant Deputy Commissioner
Consumer and Mortgage Lending Division
Kansas Office of the State Bank Commissioner

Re: February NMLS Ombudsman Meeting – MCR Issues and Data Privilege

Dear Director Payne,

As always, the Mortgage Bankers Association (MBA)¹ appreciates the opportunity offered by the NMLS Ombudsman for the real estate finance industry to engage in discussions on policy issues with the nation's state mortgage regulators. We extend our thanks to you and those agency representatives who make themselves available during these meetings as well as staff.

During the February 15, 2024, Ombudsman meeting, MBA would like to raise three concerns regarding the NMLS Mortgage Call Report (MCR). Specifically, staff would like to have a conversation with respect to: the need for greater adoption by regulators of the NMLS State Specific Supplemental Form; the importance of some form of grace period by state regulators applicable to NMLS MCR Q1 2024 filings; and the public distribution of privileged MBA member company information collected by regulators for the MCR.

NMLS State Specific Supplemental Form

The proposal of the Mortgage Call Report Version 6 (MCRV6) included a State Specific Supplemental Form (SSSF) aimed at consolidating external reporting for licensees. MBA applauds NMLS' approach to consolidate and make consistent filing to ease the reporting burdens for multi-state licensees.

At the announcement of the MCRV6 roll out in June 2023, it was unclear that states had not yet decided to adopt the SSSF. And, as recently as the mid-December NMLS "Office Hours", i.e., just before the start of V6 data collection was to begin, the industry was informed that number of

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 300,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

adopting states was undetermined. As of this writing, only eight licenses in three states have adopted the SSSF. The hope for the form is that it will serve as a source of great regulatory relief to MBA members, and it was presented as a benefit to MCR filers for all the hard work of MCRV6 implementation. This level of SSSF adoption is a disappointment, and MBA would like to hear what the impediments to embracing it are from state regulators. Anecdotally, MBA has been informed that the chief reason has been the burdensome requirements of NMLS licensing renewal season. Respectfully however, the burdens of licensing renewal season are also shared by industry who this year had the additional simultaneous challenge of performing an entire overhaul of their MCR reporting software in a very compressed timeline.

State Regulator Grace Periods for Q1 2024 MCR Reports

Since the MCRV6 implementation timeline was announced last summer, MBA and its members have raised a wide array of concerns with the Conference of State Bank Supervisors (CSBS), the American Association of Residential Mortgage Regulators (AARMR), and with individual regulators regarding the rapid MCRV6 timeline. In response, both CSBS and AARMR have issued well-received statements urging their state regulator members to offer their licensees some form of grace period related to their Q1 2024 MCR data submissions. AARMR went further and said it “encourages member agencies to consider allowing licensees who have made good faith efforts to submit accurate Q1 2024 reports the opportunity to amend their reports, without penalty, if errors are subsequently discovered, to the extent that an agency has such discretion.”²

As of this writing, just about half – only 27 – state mortgage regulators are listed on www.NMLS.org as providing a range of grace periods (30 days to 90 days). It is a concern given these powerful organizational endorsements that so many individual regulators have not responded, especially considering that the technical specifications, or Extensible Markup Language (XML), to file this new version was not provided to MCR filers or vendors until October 19, 2023. MBA’s concerns are amplified given that in both the CSBS Office Hours and testing environments member companies are continuing to report ongoing issues. And, at the time of this writing the issues with acceptance of both the V6 and V5 XML file submissions have been among the reasons the testing environment was extended. It is in this context that MBA members have expressed concerns about their ability to submit error-free Q1 2024 MCR reports and the potential consequences for needing to refile or correct information despite months of good faith efforts.

MCR Data Privilege and Protection of Member Company Information

Recently, MBA members reported their concerns about the public availability of company-specific proprietary financial information accessed from NMLS. It appears that some state regulators have been providing complete MCR data to individuals based on state freedom of information act (FOIA) requests. On at least two specific occasions, the privileged material was provided to researchers for projects on the nonbank mortgage sector. Based on a review of those papers, there appear to be no requirements imposed on the researchers to anonymize or

² <https://www.aarmr.org/about/news/aarmr-congratulates-recipient-of-2023-examiner-in-charge-eic-of-the-year-award-2/>

aggregate the data in their papers to protect confidential information. See in particular the paper published by the Syracuse University Whitman School of Management, *Lending in the Shadows: Shadow Bank Financial Fragility and Mortgage Credit*.³

We surmise that the state FOIA laws that permit such disclosure of licensee information predate the development of the MCR and the state agencies' evolving role as prudential regulators of independent mortgage bankers. Now that the NMLS collects detailed, confidential, and proprietary financial information on IMB licensees to conduct this safety and soundness supervision, MBA strongly believes that it is time for a comprehensive re-examination of the protections accorded such information – both in the NMLS terms of use for accessing MCR data and in the individual state laws governing this information. Over the past decade, MBA has worked collaboratively with CSBS as the state system has evolved from a licensing function to a supervisory function that covers capital, liquidity, and other sensitive financial information. MBA has also supported efforts to improve uniformity and consistency in industry data and better information sharing between state and federal agencies. This is an issue that must be addressed for that work to move forward in that same collaborative spirit. Thank you again for the opportunity. We look forward to the discussion.



William Kooper
Vice President
State Government Affairs and Industry Relations

³ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4238065



December 19, 2024

VIA E-MAIL TO OMBUDSMAN@NMLS.ORG

Jim Payne
NMLS Ombudsman
Conference of State Bank Supervisors / State Regulatory Registry
1300 I St NW, Suite 700 East
Washington, DC 20005

RE: Data Submitted by Licensees via the Mortgage Call Report

Dear Jim, NMLS Policy Committee and Counsel,

Thank you for the request to submit topics for discussion at the upcoming Ombudsman meetings. I continue to believe that these open and public meetings provide insights and opportunities for both industry and regulators to learn and advance the supervision by state regulators though and around the use of the NMLS. My topic comes in the form of several questions and a few concerns.

Information required to be submitted on a quarterly basis including residential loan activity, mortgage servicing activity and financial condition. I know that various aspects of the Mortgage Call Report (MCR) have been discussed at length in previous meetings. At times, some of the edges of my topics have also been questioned and answered. But I fear that the response previously given may be evolving and recent events may erode the trust in the purpose and role of the MCR as part of the supervisory process.

I seek to understand several topics:

- 1) When is submitted MCR data is confidential and privileged,
- 2) When is submitted is not confidential and privileged,
- 3) What is submitted MCR data considered to be owned by a state regulator, held by a state regulator, viewed by a state regulator and when any of these is obtainable by the public via and open records, sunshine or Freedom of Information request.

I remember this from my time as Ombudsman and the discussions shared internally and externally about the purpose use of MCR data and confidentiality of the data once submitted. The concern was to details that many licensees would consider non-public.

Q. Will the MCR be made available to the public?

Company specific reports will not be made publicly available. Aggregate data may be released to the public at a future date.

Q. What happens to my data once it is submitted?

NMLS will process the data and release reports to state regulators on the submitted data. State regulators may also review individual company Mortgage Call Report filings within the system.

These questions are copied from the bottom few questions on the MCR Frequently Asked Questions page via the NMLS Resource Center. ⁽¹⁾ They would imply from any common reading that the data submitted is in fact confidential and not released to the public. However, several recent published papers contradict these responses.

Lending in the Shadows: Shadow Bank Financial Fragility and Mortgage Credit written by Yu Shan, an Assistant Professor of Finance at the Whitman School of Management, Syracuse University. The article seems critical as the author explores “The overall financial fragility of the shadow bank sector has been consistently increasing in recent years, reaching its highest value of the past decade in 2021.” ⁽²⁾

In the article, the author details the source of information:

“We construct the financial fragility measure using data from shadow bank Mortgage Call Reports (MCRs). MCRs are quarterly reports of condition that reflect the residential mortgage loan activity and financial condition of companies that hold a state license or registration through the Nationwide Mortgage Licensing System (NMLS). The financial condition component of MCRs provide detailed company-level balance sheet information, allowing us to observe a wide array of financial variables and accounting ratios.”

Of course, the author citing ‘detailed company-level’ balance sheet information as the basis for the conclusions is concerning in how such proprietary data could be made public. The answer comes a few pages later in Section 2 – Data.

(1) <https://mortgage.nationwidelicensingsystem.org/slr/common/mcr/Pages/MCRFAQ.aspx>

(2) <https://ssrn.com/abstract=4238065>

“We construct shadow bank financial condition variables using novel data from Mortgage Call Reports (MCRs), which we obtained from the Washington State Department of Financial Institutions through a public records request. MCRs contain detailed balance sheet, income, and loan activity information of all mortgage companies that hold a state license. All licensed mortgage companies have to submit their company-level financial condition and residential mortgage loan activity information to the state regulator. We obtain the quarterly MCRs of 534 companies over 2011Q1 to 2021Q2.”

The author goes on to highlight a list of ‘*fragile*’ and less fragile non-bank mortgage lenders or “Shadow Banks” as commonly utilized in the paper by name and ranking as derived from the assistant professor’s review and inference. Certainly, highlighting the use of the data, the public nature in how it was obtained and connection to the licensee’s name questions the confidentiality of the submitted MCR data.

Similarly, a paper published by the Philadelphia Federal Reserve Bank in August 2023, Lending by Servicing Monetary Policy Transmission Through Shadow Banks by several authors also highlights the use of MCR Data. In this paper the information is stated to have come from two separate states, ‘we submit Freedom of Information Act requests to the states of Washington and Massachusetts. As long as a shadow bank is registered in either Washington or Massachusetts, i.e., it does business in these states, we can obtain its MCR data at the mortgage company level regardless of where it is headquartered.’⁽³⁾

I do not wish to debate the papers other releases of MCR data as this is sure to be a sensitive topic and only request these questions to be discussed so that all licensees and NMLS users are aware of the likelihood of a public release.

Please share the current understanding of when information is confidential under the protections provided by Section 1512(a) of the Federal SAFE Act and when data that resides in the NMLS is not confidential. Also, a discussion on how confidential status may be impacted by certain state laws impacting data owned, viewed or held by the individual state.

Thank you for your consideration and clarifications to this topic.



Bob Niemi, CMB
AARMR IAC Chair 23-24
niemi@theWBKfirm.com

(3) <https://www.philadelphiafed.org/the-economy/monetary-policy/lending-by-servicing-monetary-policy-transmission-through-shadow-banks>
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