



**NMLS Ombudsman Meeting**  
**Grand Hyatt Seattle, Washington**  
**Leonse II & III**  
9:00 am - 12:00 pm (PT)  
August 5, 2014

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Agenda:

1. Robert Niemi, NMLS Ombudsman  
Deputy Superintendent for Consumer Finance, Ohio Division of Financial Institutions
  - Ombudsman update and issue review
2. Andrew Hall, Licensing Manager  
Royal United Mortgage LLC
  - Process for Approving Sponsorships of MLOs
3. Ken Markison, Vice President and Regulatory Counsel  
William Kooper, Associate Vice President of State Gov't Affairs & Industry Relations  
Mortgage Bankers Association
  - Amendments/Updates to NMLS Consumer Access
  - Uniform Testing Standard for all MLOs
  - Aligning HMDA and the Mortgage Call Report (MCR) Data Requests
  - Ensuring Confidentiality in NMLS of federally registered MLOs Education and Testing Information
4. Amy Greenwood-Field, Counsel  
Dykema
  - Checklist Updates:
    - Clarify non-NMLS processed fingerprinting instructions
    - Include statutory citations for license authority
    - Include whether a hard copy license will be issued if the application is successful
  - Renewal Best Practices:
    - Clarify what happens to a pending renewal on January 1<sup>st</sup>
    - Are notifications clear on whether business must cease?
    - What about consumers relying on consumer access?

- Backdating a license status 6 months is confusing for all parties involved
- Suggest potential new public renewal license status for consumer access purposes (approved-renewal pending and inactive-renewal pending)
- Sponsorship Best Practices:
  - Timing of approving sponsorship for a MLO that is transition between employers on the same day
  - What happens to the license between sponsorships?
  - Is the goal to keep the MLO in an active status so that consumers can continue to be served if there are no non-material issues pending with the license?

5. Costas Avrakotos  
K&L Gates LLP

- Responses to Regulatory Disclosure Questions regarding:
  - NMLS Policy Guide Definition of “proceeding”
  - Confidential Supervisory Matters

6. Open Discussion

Andrew Hall: Sponsorship

**1. Sponsorship(s) of MLO's:**

I certainly understand the necessity and the functionality of the sponsorship requirement in the NMLS and the reason (most) states require this piece, however, I do believe this requirement could be executed much more efficiently. I'll start by citing an example of an issue I have run into in my travels:

Let's say we identify an individual we would like to bring on board to become a part of our origination group. Let's say as well that this individual is a seasoned veteran of the mortgage industry currently working in an approved status in multiple states for another entity. Now, because this individual is a professional and courteous person, his/her intention is not to burn bridges in their shift from one company to another and attempts to do all of the appropriate things before, during and after the transition... yet, as anyone who has ever been in a sales position knows, offering up your two weeks' notice will most likely result in an immediate termination of employment. That is the case in this example. The individual is terminated and as a result, indicates to us that he/she would be able to start much sooner than previously anticipated. We agree. He/ she creates a relationship with our company in the NMLS after their previous company terminates them and updates all of their pertinent information. We, in turn, request and pay for sponsorships through the system and Mr./ Ms. Mortgage Vet is now officially on our books.

One would think that because all of the necessary steps have been completed, Mr./ Ms. Mortgage Vet could jump right in where they left off in all of their approved states. Nope. We have to wait... until those sponsorship requests are accepted and each license moves from an inactive status to an active status in NMLS. Day one; 1 state out of the 12 requested have accepted. Day 3; 3 out of 12 have accepted. Day 10; 8 out of 12 have accepted. Day (?); I'm firing off emails and making phone calls requesting that these sponsorship requests be accepted and as understaffed and busy as most states are, unfortunately, it's not on the same list of priorities as it is for us and Mr./ Ms. Mortgage Vet. As a result, we're left paying an individual and on the hook for the cost of sponsorship(s), all without the ability to utilize their service to the fullest potential.

In my humble opinion, the instant we put them on the books, create that relationship in NMLS and pay for/ request sponsorship of their licenses, they should be able to originate (assuming of course they were in a status previously that allowed this). That is not the case; and after having paid for these requests and waited for any amount of time other than that

particular instant and having had to make phone calls and send emails and one by one activate permissions in our systems as they come in, whenever that may be... its taxing, costly and quite frustrating for everyone on this end of the rope.

I know how busy the states are and as mindless as this process is... and considering how smart the NMLS system is already, my suggestion would be to automate in some fashion, relieving the states of their end of the responsibility... freeing up more time for their true priorities and in turn allowing us to operate in a more efficient manner of expectations as well. I cannot say that I'm 100% savvy on state(s) take on this and whether or not there would be legal obstacles or individual state statutes that would need to be considered prior to automating. If there are states that would be opposed to this or have statutes in place restricting this, I would love to hear where they're coming from and why. If there are states that would sign this petition with me, of course, I'd love to have them speak up as well. Those states that don't do this inactive/ active dance, thanks for making our lives easier. If anyone has alternate suggestions for perfecting, again, my office door is open... come right in.



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July 30, 2014

Robert Niemi  
NMLS Ombudsman  
c/o Conference of State Bank Supervisors  
1129 29th Street NW, 9th Floor  
Washington, DC 20036

Re: August 2014 NMLS Ombudsman Meeting Topics

Dear Mr. Niemi:

I would like to submit the following topics for discussion during the upcoming August 2014 NMLS Ombudsman meeting in Seattle, Washington: updating NMLS checklists; renewal best practices, and sponsorship best practices.

### **Updating NMLS Checklists**

It is my understanding that NMLS is in the process of re-designing checklists, and I understand that attempting to get all 60 state or territorial government agencies to review the license description and the three checklists (New Application, Amendment and Surrender) for each mortgage and consumer finance license type housed in the system is a difficult project. However I have encountered some additional items since I first brought up the checklist issue at our Miami meeting that I would like the relevant regulatory agencies to consider as you tackle this project.

I believe that the instructions for submitting non-NMLS processed fingerprints need additional clarity. I understand that the negotiations with the FBI to be able to process individual state reports in the system are likely still ongoing. Until that authority is granted, applicants will continue to be challenged by states that have requirements that a State-specific card (rather than a generic FBI fingerprint card) be submitted. For a large nationwide company, often one fingerprint appointment is scheduled for a prospective control person to meet all fingerprint obligations. If specific cards must be used that are not available at the time of the original fingerprinting appointment, the proposed control person has to submit to a second round of fingerprinting which only delays the submission and review process. I would encourage jurisdictions to explore if there would be other acceptable options to authenticate cards for their jurisdiction in lieu of submission of a State-specific card. For example, would adding a state origination number to a generic FBI card be sufficient?



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Additionally, despite the fact that many jurisdictions have made clarifying updates to their checklists, it is still difficult in some cases to determine the appropriate fee for fingerprints that are collected outside of NMLS. In one jurisdiction recently, the checklist contained a link to the jurisdiction's website that indicated the fee was \$67.20 but the form that was sent by the jurisdiction indicated that the fee was \$62.75. When questioned, the jurisdiction came back and indicated that the proper fee to submit was \$63.19. Had a company sent the wrong amount along with the filing, would the jurisdiction have given the company a refund if it had overpaid, or if the company had underpaid would they have sent a letter requesting an additional \$.44? Understandably, at some point the fee that the jurisdiction in this instance had to pay changed but the fact that it was not appropriately and consistently updated makes it hard for a company to comply.

As checklists are updated, please consider adding the appropriate statutory citation for each applicable license maintained on NMLS to the license description document uploaded to your state's NMLS licensing page. Jurisdictions know their law inside and out, but when an applicant is trying to determine if they have all items gathered for filing, or determine which license is applicable to their business, a direct citation would give them a good place to start their research before they have to attempt to call a jurisdiction for clarity.

Finally, please consider making it clear on your checklists whether or not your jurisdiction still issues a hard copy license. We recently facilitated a large multi-jurisdictional transaction that included a name change. However, it was hard to identify which states still had outstanding issues after the transaction posted in NMLS because it was not clear which jurisdictions were still issuing hard copy licenses. Some of these licenses were issued months after the transaction closed (and the name had been updated in NMLS and on Consumer Access), and at that point corrections still needed to be made because information regarding the name change hadn't been routed to the individual actually processing the paper license outside of NMLS.

### **Renewal Best Practices**

NMLS has been soliciting feedback with respect to renewals and many of the items originally included in my short topic list have already been brought up for discussion. Any information that jurisdictions can provide to make clear their expectations of a company or individual throughout the renewal process, including what happens when a renewal isn't able to be approved by December 31<sup>st</sup>, would be beneficial. I have heard of several instances where jurisdictions backdated a license status to reflect a rejected renewal months after renewal had ended (i.e., backdating the license status to reflect a denial as of January 1<sup>st</sup>.) This practice does not serve any consumers (or investors) relying on consumer access in the interim time period to determine whether or not a MLO or company is authorized to conduct business in a specific jurisdiction.



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I would suggest the adoption of some renewal best practices for industry and regulator use that clarify how the system treats certain incidences that happen around renewal and how that may differ from a jurisdiction's current practice or statutory restrictions, especially since that process is one that many don't think about year-round. I would also suggest the addition of two public renewal-related license statuses that would provide clarity for consumer access purposes: approved-renewal pending and inactive-renewal pending. These additional license statuses would allow consumers and investors to make a better informed decision about conducting business with a MLO or company that may still be trying to respond to lingering renewal issues.

### **Sponsorship Best Practices**

We were recently involved in a multi-state transaction that involved a number of MLOs having their sponsorship removed by one company and simultaneously added by a subsequent company. All applicable jurisdictions were notified of the transaction and the MLOs that were expected to be involved in advance outside of the system (since the functionality for pre-notification does not exist within NMLS currently.) The vast majority of states involved were able to accommodate these MLOs to make sure that there was no gap in licensable activity associated with the transaction. However, because of the way that some states processed the sponsorship removals and additions and because of the way that some states dated the sponsorship approvals or license status changes (not allowing for backdating to match the transaction date), MLOs in some jurisdictions had to cease doing business for a brief period of time until the appropriate system updates were made.

There is not uniformity between jurisdictions in what happens to a license between sponsorships (i.e.: is it moved to "approved-inactive" status) and there is not uniformity regarding what license status is applied once a sponsorship is accepted, even if minor deficiencies remain (i.e.: following guidebook definitions, a license with an approved sponsorship should be in some sort of active status, not stay in an inactive status.) I would hope that the goal for all jurisdictions would be to keep a MLO in an active status so that consumers can continue to be served, if there are no non-material issues pending with the license and the jurisdiction has been given advance notice of the transaction. Developing best practices for both industry and regulators to reference when dealing with sponsorship issues would be helpful to all parties involved.

I look forward to visiting with you about these issues in Seattle.

Best Regards,

DYKEMA GOSSETT PLLC

Amy Greenwood-Field

# MEMORANDUM

To: Robert Niemi  
Ombudsman

From: Costas Avrakotos

Re: Issues for the Ombudsman for the 2014 AARMR conference

Date: July 25, 2014

I have prepared this request for the Ombudsman's consideration, as it involves an issue that has arisen a number of times for the clients we represent that merits the Ombudsman's consideration. This issue involves one of the regulatory disclosure questions that officers of a license applicant or licensee must answer when an entity applies for a license. This issue arises for companies seeking a mortgage finance license, or those companies seeking a consumer finance license that has been transitioned to the NMLS.

## **Background**

We have clients that are affiliated with federally chartered financial depository institutions under common ownership. For purposes of this memorandum, I will discuss the issue involving one Company as an example. The regulatory disclosure question involves certain officers of the Company who also are officers of the financial depository institution. The issue arises from an ongoing compliance examination of the financial depository institution by its federal banking agency regulator. As part of this regular examination, the federal banking agency reviewed certain of the financial institution's sales practices and ancillary products for compliance with generally applicable federal consumer credit laws. In other examples, the examination could have involved other matters. In the course of this examination, certain questions were raised, and the federal banking agency sent a supervisory letter to the financial institution requesting additional information to address these questions, and to determine, what, if any, action should be taken. As I understand, this information is treated as confidential non-public information, and that this matter is considered by the federal banking agency regulator to be a confidential supervisory matter (herein, the "Supervisory Matter").

## **Issues Before the Ombudsman**

The issues before the Ombudsman are twofold: (i) we do not believe that the individuals serving as officers of the Company and the depository institution are required to make an affirmative reply to certain MU2-related regulatory disclosure questions as a result of the Supervisory Matter; and (ii) we seek guidance as to the manner in which licensees, license applicants, and their control persons should answer regulatory disclosure questions when the regulatory matter is considered confidential by the federal or state regulatory authority, and is not to be disclosed or reported. We discuss each below.

## 1) The Supervisory Matter

With respect the Supervisory Matter, the issue arises from one of two questions that were added to the officer's questionnaire in the April, 2012 revisions to the control person's disclosures in the MU2.

(N) Is there a pending regulatory action proceeding against you for any alleged violation described in (K) through (L)?

(O) Based upon activities that occurred while you exercised control over an organization, is there a pending regulatory action proceeding against any organization for any alleged violation described in (K) through (L)?

In our situation, only Question (O) is at issue. The officers of the Company are not named in any regulatory proceeding action, so Question (N) is not an immediate concern. For Question (O), however, we are not 100 percent certain as to how to respond. The question applies to a regulatory action proceeding, and not any matter or action involving a regulatory agency. From a review of the Supervisory Matter and the NMLS Policy Guidebook, we believe that the correct and appropriate reply is to answer "NO" to Question (O). The NMLS Policy Guidebook defines the term proceeding as follows:

Proceeding-- Includes a formal administrative or civil action initiated by a governmental agency, self-regulatory organization, or a foreign financial regulatory authority; a felony criminal indictment or information (or equivalent formal charge); or a misdemeanor criminal information (or equivalent formal charge); does not include other civil litigation, investigations, or arrests or similar charges affected in the absence of a formal criminal indictment or information( or equivalent formal charge).

As far as my records show, this definition has been the same since the NMLS Guidebook was published. We believe it is reasonable for the officers of the Company who also are or were officers of the depository institution to answer "NO" to Question (O). Question (O) is limited as to the regulatory matters that must be reported. Every regulatory examination, inquiry, investigation, audit, or request for information is not subject to being disclosed. Only those regulatory actions that rise to the level of a proceeding, as defined in the NMLS, are subject to being reported. We do not believe the Supervisory Matter is a proceeding, as the Supervisory Matter arises in the course of the banking agency's ongoing compliance examination of the depository institution. The depository institution is subject to supervision by its federal regulator, and such compliance examinations are part of the routine supervisory procedures in place to oversee the business and practices of the regulated depository institutions. Accordingly, we believe that Question (O) should be answered "NO" when it involves the Supervisory Matter. However, we are concerned that the Supervisory Matter may become publicly available at a later date, which will lead state regulators to question the officer's reasoned decision to answer "NO," and lead to sanctions involving the officer, or to the denial or suspension of a license for the Company. We, therefore, respectfully request the Ombudsman's consideration of our analysis of this issue and similar situations, and that it is reasonable for the officers of the Company to answer "NO" to Question (O) when it comes to the Supervisory Matter.

## 2) Confidential Regulatory Matters

We also seek guidance as to the manner in which licensees, license applicants, and their control persons should answer regulatory disclosure questions when the regulatory matter is considered confidential by the federal or state regulatory authority, and is not to be disclosed or reported.

It is common for federal or state regulators to provide that examinations, examination reports, inquiries, investigations, sanctions, or fines, among other regulatory actions, are to be kept confidential and to not be disclosed or reported to anyone. The licensee or regulated entity is directed to treat the matter as confidential, or be subject to sanctions. Being presented with disclosure questions that require the licensee or regulated entity to report "regulatory actions" or "sanctions" raises conflicts for licensees or regulated entities that are not readily resolved. Licensees and regulated entities should not be placed in a position where whatever action they take will violate some regulator's directive. This is an issue that merits consideration by the Ombudsman and state regulators so that clear guidance can be issued to provide licensees and regulated entities with direction as to how to proceed when they are subject to confidential supervisory or regulatory matters. If companies are subject to confidential supervisory or regulatory matters, it would be reasonable to exclude those matters from having to be reported. They should be free of concern of sanctions being imposed for not reporting confidential supervisory matters. We would think that the state mortgage finance agencies would honor situations where confidential supervisory matters are involved, and not compel a licensee to report those matters, as many state agencies treat their regulatory actions as confidential. If this is an issue that the Ombudsman has addressed, we would welcome some guidance. If this is not an issue that has generated discussion among state regulators, we respectfully request that this matter be considered by the Ombudsman and the NMLS Policy Committee.

I trust I have presented sufficient information for the Ombudsman's consideration for the Conference.