



NMLS Ombudsman Meeting
Hotel Nikko
San Francisco, CA

MEETING SUMMARY

August 9, 2011

Attendees:

Approximately 125 participants attended the NMLS Ombudsman meeting in San Francisco which included representatives from 12 state mortgage regulatory agencies.

Meeting Summary

Deb Bortner, NMLS Ombudsman and Director, Non-Depository Division, Washington Department of Financial Institutions, gave a short summary of the types of information requests and questions that have been submitted to the Ombudsman during the past 6 months.

NMLS Mortgage Call Report Update (Rich Cortes, Principal Financial Examiner, Connecticut Department of Banking)

Some industry members inquired whether or not the NMLS Mortgage Call Report data would be shared with the CFPB. Under the MOU with the CFPB, states would have the ability to share this information with the CFPB but would not be obligated to do so. Other industry members asked if completion of all NMLS Mortgage Call Report filings was required for company license renewal. While NMLS will not systemically enforce a requirement of this sort this year, most state agencies in the audience did state they will enforce this as a renewal requirement.

Regulatory Action Reporting in NMLS (Louisa Broudy, Deputy Commissioner, California Department of Corporations)

States are required by the SAFE Act to make final adjudicated disciplinary actions against mortgage loan originators public and the end goal of this new functionality will result in such actions being displayed on *NMLS Consumer Access*. SRR recently sent out policy guidelines regarding that functionality for public comment.

Submitted Industry Issues

1. Transitional Licensing

Ken Markison, Associate Vice President & Regulatory Counsel, MBA of America, introduced the issue of transitional licensing of mortgage loan originators who are moving from state-to-state or from a depository institution to a state-licensed company. The MBA and its members are very concerned about the competitive disadvantages faced by state-licensed companies in their efforts to attract well qualified originators from depository institutions due to the time constraints embedded in meeting the education, testing, and other license prerequisites that do not apply in the depository context. While the MBA and others requested HUD to address this issue in the SAFE Act rules, in the final rule HUD chose not to do so. It is the MBA's opinion that this silence can be viewed as an endorsement and that states do have the legal authority to develop provisions for a transitional or conditional license. The Association has developed a legal opinion to that effect which they offered to provide to the state regulators. Some of the states expressed concerns about situations that may arise if they allow an individual to operate as an originator and then, during the transitional time period, determine that he or she is not qualified to obtain a license. In many jurisdictions, this would require an administrative proceeding in order to remove what is in essence a property right that had been granted to the individual.

The MBA's proposal contains numerous qualifications, such as amount of experience and the existence of a surety bond, in order for an originator to qualify for a transitional license. The group is planning to meet with the CFPB on the issue and will be drafting statutory language for consideration by the states.

2. Licensing of Mortgage Insurance Underwriters

David Dodd, Vice President & Associate General Counsel, Genworth Mortgage Insurance Corporation, discussed some of the difficulties that mortgage insurers are facing in attempting to comply with the SAFE Act requirements for licensure of underwriters. Mortgage insurance company affiliates only provide underwriting services to lenders and do not meet the general state law definitions of "mortgage broker", "mortgage lender" or "mortgage banker". Because such companies do not engage in mortgage broker or lending activities, they are not required to be licensed and thus should be exempt from state broker license requirements so they can sponsor their individual underwriters applying for state loan originator licenses through an exempt company registration on NMLS. The proposed solutions are that the MI Affiliate should be granted exempt company status in all states so they may sponsor their underwriters

who become licensed loan originators. Alternatively, if states determine that a company license is nonetheless required in order to sponsor the underwriter, the Texas model offers a reasonable solution. Texas offers an “Independent Contractor Processor/Underwriter Company License”, and such license may be obtained upon payment of an application fee and submission of an MU-4 by a licensed individual.

3. Branch Issues in NMLS

Jenifer Edwards, Licensing Manager with Primary Residential Mortgage, Inc, began a discussion on several unexpected branch licensing issues a company may encounter when using NMLS. The primary issue discussed centered on the requirement that a branch manager must be designated at all times with a branch, including when a company is requesting a surrender of a branch license when closing a branch. Since some branch managers may leave the company unexpectedly and disassociate themselves from the company before the license surrender request has been submitted, companies are currently required to add an existing Control Person to the branch to fulfill the branch manager role in order to submit the surrender request. Some state regulators echoed these concerns and asked that a working group of state regulators be appointed to research this issue and achieve an appropriate solution. Tanya Anthony of ResCap, Inc, continued the discussion on branch managers and noted that a requiring a branch manager to open a branch may also prove troublesome for some companies. For example, when a company would like to open a branch in anticipation of hiring new employees in an area they must have a pre-designated branch manager for initial application even though a permanent branch manager may not have been hired or fully compliant with all states’ branch manager requirements. This causes delays in branch approval and hiring individual mortgage loan originators for that branch location becomes more difficult. Many of the state agencies in the meeting expressed a willingness to work with companies when opening branches under these circumstances and encouraged participants to contact them.

Open Question and Answer

Gus Avrakotos, Partner with K&L Gates, raised three issues for the Ombudsman’s consideration. The first issue entails fingerprinting multiple times of a single individual based on unique state requirements. He noted that most, if not all, of these individuals typically are company owners or executive officers who are not required to hold a mortgage loan originator license. CSBS staff reminded the audience that CSBS is currently authorized as a channeler for mortgage loan originator licensing only and is unable, absent appropriate state law and FBI approval, to submit prints for company owners and officers. Using NMLS for this function would bring the same efficiencies brought for mortgage loan originator fingerprinting and background checks.

Mr. Avrakotos also requested that a more complete list of all issues submitted to the Ombudsman and the resulting outcome, absent personal information, be posted on the NMLS Resource Center so others can see how issues are handled and resolved by the NMLS Ombudsman. Deb Bortner expressed an acceptance of this request and committed to exploring resources to accommodate this and post the information on the Ombudsman's page of the NMLS Resource Center.

Lastly, Mr. Avrakotos asked if the agendas for conference call meetings held among state regulators be posted publicly online for view. While noting that company specific information or enforcement related matters need not necessarily be included on the public agendas, he did express his desire to better understand the policy and decision making process being SAFE Act implementation from this information. Deb Bortner stated she would bring this back to the states for consideration and would communicate the decision once a consensus had been reached.

Kristie Battershell of Quicken Loans raised the issue of enhancing NMLS to accommodate private notes and communication between a state regulator and a mortgage loan originator. While Quicken understands that certain items are considered confidential between a regulator and a mortgage loan originator, it is often difficult for companies to properly follow up with their employees to clear outstanding or unresolved items when the company has limited knowledge of the item itself. State regulators in the room responded that they are simply unable to disclose certain information to third parties like an employer but would continue to use the recently added system private note feature which facilitates the confidential communication between an agency and an individual while also allowing the company to track that an item is outstanding for the individual. Other industry participants voiced a desire for states to use the external notes feature within the system to communicate outstanding items and to add agency contact information to the note to better facilitate the follow-up that is often required.