

RESPONSE TO COMMENTS RECEIVED DURING THE SRR COMMENT PERIOD ON REPORTING OF STATE REGULATORY ACTIONS JULY 22, 2011 TO SEPTEMBER 20, 2011

On July 22, 2011, the State Regulatory Registry LLC (SRR)¹ invited public comments on the “Reporting of State Regulatory Actions” functionality that was being developed in NMLS² and *NMLS Consumer Access*³. The purpose of the functionality is to provide information about companies and individuals in one location to benefit the public at large and to fulfill the objectives and mandates of the SAFE Act⁴. This functionality allows NMLS participating state agencies to post regulatory actions in the system and to make them available on *NMLS Consumer Access*. The deadline for submitting comments was September 20, 2011. The following is a summary of the comments received with responses.

Background

State mortgage regulators make public information describing regulatory actions taken against licensed companies and individuals on their agency websites or through other means according to their state laws and/or regulations.

When NMLS (the System) was launched in January 2008, one of the stated goals of state regulators in creating the System was to provide a central source of standardized information concerning enforcement actions taken by state mortgage regulators against companies and individuals. One of the natural benefits of a centralized system such as NMLS is the consolidation of enforcement action reporting by multiple regulators in one place. This original goal was further supported by specific language contained in the SAFE Act.

SAFE Act Requirements

Title V of the SAFE Act requires that NMLS:

“Provide(s) consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.” [12 USCA § 5101 (7)]

¹ State Regulatory Registry LLC (SRR) is a nonprofit subsidiary of the Conference of State Bank Supervisors (CSBS) that operates NMLS on behalf of state financial services regulatory agencies.

² Information about NMLS can be found at: www.mortgage.nationwidelicensingsystem.org.

³ *NMLS Consumer Access* is a free on-line service for consumers to confirm that a mortgage company or mortgage professional is authorized to conduct business in a particular jurisdiction, and can be found at: www.nmlsconsumeraccess.org.

⁴ The SAFE Act is Public Law 110-289 (PL 110-289) and information on the law can be found at: <http://mortgage.nationwidelicensingsystem.org/SAFE/Pages/default.aspx>.

NMLS must fulfill this mandate for both state-licensed and federally registered mortgage loan originators (MLOs). The focus of the Request for Public Comments 2011-3 and the functionality developed to date is solely for the reporting of actions taken by state regulators participating on NMLS. With regard to MLOs under state authority, the SAFE Act provides that:

“The State loan originator supervisory authority is required to regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry. [12 USCS § 5107(d)(3).]”

Functionality for the reporting of regulatory actions against federally registered MLOs will be developed at the direction of the Consumer Financial Protection Bureau (CFPB) and is expected to be introduced in October 2012 in NMLS.

To support these mandates, the SAFE Act specifically provides that information and material provided to NMLS is protected under state or federal law and may be freely shared among state and federal mortgage regulatory officials without the loss of privilege or confidentiality protections. [12 USCA § 5111.]

The implementation of the State Regulatory Actions functionality is not limited to fulfilling the mandates of the SAFE Act concerning mortgage loan originators. Just as NMLS is a System of state licensure beyond the mandates of the SAFE Act, the Reporting of State Regulatory Actions is intended to fulfill the broader goals of state regulators in providing improved oversight and greater transparency for all state licensed mortgage companies and individuals.

Reporting of State Regulatory Actions

NMLS has been enhanced to allow each state regulatory agency participating in the System to have the ability to input a State Regulatory Action into NMLS and attach it to a company's or individual's record. Regulatory Actions include actions brought against a respondent (company or individual with an NMLS base record) or an Unidentifiable Respondent (unlicensed company or individual). The regulators have the ability to enter information about the action (e.g. Docket Number, Date of Action, Type of Action, Fines/Restitution, Notes, etc) as well as add respondents and supporting documents (PDF documents). Incomplete or actions marked private are only viewable by the posting regulator; Public Actions are viewable by Respondents and may become available in Consumer Access.

The decision as to whether or not a particular Action can be uploaded into NMLS will be the purview of the state regulator, acting in accordance with their state laws and regulations.

Responses to Comments

At the end of the public comment period, SRR had received submissions from seven commenters concerning the Reporting of State Regulatory Actions.⁵ Commenters included

⁵ All comments can be viewed on the NMLS Resource Center at: <http://mortgage.nationwidelicencingsystem.org/news/Pages/ProposalsforComment.aspx>.

industry trade groups, a depository institution, and state-licensed mortgage companies. The comments were reviewed by the Regulatory Actions Working Group, and the Mortgage Licensing Policy Committee⁶. The following is a summary of the major topics raised in the comments and SRR's response to those comments.

I. Authority for State Regulators to Post and Share Information on NMLS

Several commenters stated that the SAFE Act does not authorize the posting and sharing of information on NMLS regarding mortgage lending companies and that the sharing of such information is beyond the scope of the authority granted by the SAFE Act. One commenter objected to "the inclusion of any information in NMLS on mortgage lending companies on the grounds that the inclusion of such information is beyond the scope of the SAFE Act, which is the basic authorizing legislation for the NMLS."

SRR Response

The authority and ability for states to license and regulate mortgage companies and mortgage loan originators, and the NMLS itself, existed before the enactment of the SAFE Act. The authority for a state to use NMLS to license companies, branches, and mortgage loan originators, as well as to share information with fellow regulators and to report regulatory actions, resides in state law and regulation.

NMLS was created by state regulators prior to the SAFE Act as the vehicle through which states could utilize uniform licensing forms and manage nearly all aspects of each state's regulatory scheme in a collaborative manner, improving efficiencies and oversight of the mortgage industry. While most of the provisions of the SAFE Act apply to only mortgage loan originators, its purpose is to set forth *minimum* requirements for the licensure and registration of all individuals who engage in the business of residential mortgage loan origination and to require that those licenses be issued through the use of NMLS⁷. In drafting the provisions of the SAFE Act, Congress specifically directed the States, through CSBS and AARMR, to establish a Nationwide Mortgage Licensing System and Registry to fulfill the purposes of the Act. NMLS was already in use by 14 state regulatory agencies at the time of passage of the SAFE Act and provided the framework for implementing the new MLO requirements while continuing to serve as the licensing System for a broader scope of entities under state authority.

The enactment of the SAFE Act and its legislative mandates for NMLS changed the System development priorities originally envisioned by state regulators as the states moved to fulfill those mandates. However, because NMLS is used by the majority of state agencies as the System of record for licensing mortgage lenders, mortgage brokers and mortgage servicers, in addition to MLOs, State Regulatory Actions functionality and processes have been

⁶ The working group was comprised of state regulators from California, Florida, Indiana, Massachusetts, North Carolina, and Washington. The membership of the Mortgage Licensing Policy Committee (MLPC) can be found here: <http://mortgage.nationwidelicencingsystem.org/about/Documents/MLPC%20Committee%20List.pdf>.

⁷ Registered mortgage loan originators obtain registration through NMLS as mandated by the CFPB.

developed to not only address the required SAFE Act mandate but also to accommodate and facilitate the state regulatory administration of mortgage licensing laws and regulations. The same public purposes aimed at increasing transparency and enhancing consumer protection that are fulfilled by having states use a single licensing system are fulfilled by having states post actions to the single system.

As noted above, the majority of state mortgage regulators publish enforcement actions taken against companies and individuals on public websites in order to provide the public with relevant information regarding entities regulated by the state. State regulators took the approach early on that development of System functionality to facilitate the publication of such information for both companies and individuals on *NMLS Consumer Access* is in the best interests of consumers and is supported by the supervisory role of the state regulators.

II. Information Posted on *NMLS Consumer Access*

Many of the commenters requested further clarification to explain exactly what kind of information can be posted. Others specifically noted that complaints that are under investigation that have not been adjudicated should not be published, and that only final judgments, after appeals, should be reported.

SRR Response

The type of actions that will be reported by state agencies through NMLS will be governed by state law and regulation.

Each state agency is subject to state laws and regulations concerning the privacy and confidentiality of information and documents relating to state licensees that determine the type and level of sharing of such information. Those laws vary between jurisdictions and range from very broad open records laws (which may permit access to virtually any document submitted to, or produced by, the agency) to more restrictive statutes and policies. The regulatory actions posted on *NMLS Consumer Access* will consist of those actions issued by a state regulatory agency that are a matter of public record under the laws and regulations of the particular state and where it is the policy of the agency to make such actions public. **Addendum A** to this response for comments provides the data that state regulators may upload in NMLS concerning each action, and what data will be viewable on *NMLS Consumer Access*.

SRR agrees with comments that indicate complaints under investigation should not be reported through this functionality. It was not and is not the intention of the state agencies that pending consumer complaints, pending investigations, or confidential examination reports be made public through this functionality in NMLS. The State Regulatory Working Group encourages each state agency to develop a protocol for posting for public view.

Timeframe for Posting Actions in NMLS

Commenters questioned the recommendation that information should be posted promptly, but in no case more than 5 days after receipt of the final order by the state agency. One issue that was raised was that NMLS instructions require that a licensee update its record within 30 days of a change, including new regulatory matters that need to be disclosed, and

that this time period has been generally accepted by most states as meeting timing requirements for updating records. The commenter requested that if state agencies post actions in advance of the 30 day period, that agencies refrain from placing any deficiency on a licensee's record until 30 days after taking the final action.

SRR Response

The 5 days after receipt of a final order by a state agency was adopted due to concerns of the regulators that the public is best served by getting the most up-to-date and timely information. However, as state agencies have begun implementing the reporting process in NMLS, they have determined that it makes more sense to not impose a specific timeline on when actions should be reported in order to allow for variances due to staff resources, etc. However, on the issue of license deficiencies, many state agencies use the posting of deficiencies as part of their internal work flow process and regard such postings as a "courtesy reminder" for licensees and not as a negative mark on any particular licensee's record.

Though state requirements for updating information may be more stringent and licensees must understand and comply with the requirements of the state in which they hold a license, SRR has informed states of the System requirement that records (e.g. disclosure question information) be updated within 30 days which may result in some licensees with an enforcement action posted to their record who have not yet updated their license record.

Posting Actions on a Go-forward Basis

Commenters asked for clarification on the recommendation that actions taken against loan originators since the effective date of a state's SAFE Act became effective should be posted.

SRR Response

As a practical matter, many of the state agencies began posting actions in NMLS as of January 1, 2012 (the functionality became available in October 2011). As noted above, each state agency will determine what actions to post and SRR does not mandate any particular date but the State Regulatory Working Group suggested that agencies adopt their state's SAFE Act effective date as an option. When actions become available on *NMLS Consumer Access*, SRR plans to provide notice that the functionality to post actions in NMLS became effective in late 2011 and that in order to view regulatory actions prior to that time, the public may have to consult the specific state agency. There is no prohibition on the posting of actions that became public prior to October 2011, and certain state agencies may decide to add such actions to NMLS.

III. Issues Related to Notification of Postings

Prior Notification of Posting for Regulator-Only viewing

Two commenters noted that Section 1508(d)(4) of the SAFE Act states that in order for the Secretary to find that a State law meets the requirements of the SAFE Act one of the findings must be:

The State loan originator supervisory authority has in place a process for challenging information contained in the Nationwide Mortgage Licensing System and Registry.

As currently described in the proposal for comments, notifications of a posting would be sent to companies and individuals in connection only with actions that are marked as public. The commenters stated that this SAFE Act provision does not draw any distinction between information in the publicly viewable area of NMLS and information in the area viewable only by regulators.

SRR Response

NMLS is a licensing System that allows for the sharing of information, both confidential and non-confidential among participating regulators. The purpose of this sharing is to close gaps in information for regulators of financial services providers and to provide the framework for a coordinated approach to regulation of companies and individuals that are licensed in multiple states. Confidential information such as criminal background checks and credit checks are already shared among regulators through NMLS.

While state agencies may have access to confidential regulatory information shared through NMLS, they have indicated that prior to taking any action on such information, they generally must perform their own independent verification of the information. This independent verification typically includes informing the licensee of the information and providing an opportunity for the licensee to challenge the information. Under the SAFE Act it is incumbent upon each state agency to ensure that it has a sufficient process in place that requires prior notification to any licensee about information that the state may be using in connection with an investigation that may result in an adverse action. The due process available to licensees under state law and regulations should fulfill the SAFE Act requirement that MLOs have to be provided a process to challenge information in NMLS that is being used by the state regulator to take an adverse action. The Consumer Financial Protection Bureau is tasked with determining if the due process provided by a state is sufficient to meet the requirements of the Act.

Procedures for Disputing Actions Posted in NMLS

It was suggested that companies should be provided with 60 days written notice prior to posting any company information on the NMLS to give an opportunity to review and file comments on the information, including objections. One commenter suggested reviewing the process developed by the Securities and Exchange Commission for stock brokers and stock brokerage companies may dispute information posted on the Financial Industry Regulatory Authority's (FINRA) BrokerCheck website.

SRR Response

As indicated above, the actions that will be posted in NMLS (and ultimately on *NMLS Consumer Access*) are those that have been issued by a state regulatory agency and are a matter of public record under the laws and regulations of the particular state. SRR/NMLS intentionally does not intervene in or control the posting of state regulatory actions. NMLS

is the reporting System of record for the states, but it is the individual state mortgage agency that determines what information is entered into the System.

Due Process

Commenters raised the concern that state regulators will utilize the posting of actions as a way of providing notification to the company or individual of the regulatory action, rather than contacting the company directly, formally serving them with notice, or following other due process procedures.

SRR Response

SRR and the state regulators agree that the use of NMLS as the vehicle for the posting of public actions (which will eventually result in posting on *NMLS Consumer Access*) does not supplant or otherwise replace a state agency's work process for the filing and adjudication of any action, including any formal process of service requirements whereby respondents are notified of any formal actions and the appropriate orders or other documents are properly delivered to them.

States may link any Control Persons to any action taken against the associated company

Commenters raised concerns about the ability of a state agency to link an action taken against a licensed company to a control person connected to that company that is not listed as a respondent.

SRR Response

In the original survey of state agencies that was used in determining the posting of regulatory actions functionality in NMLS, a majority of states indicated that, under certain circumstances, they would want to connect a Control Person⁸ to an action involving the company that the Control Person represented. However, in follow-up conversations with state agencies, the agencies indicated that only persons actually named in an order would have regulatory actions added to their record. One of the reasons that SRR (from a System functionality standpoint) needed to clarify the posting of regulatory actions against Control Persons is the fact that these individuals are not currently listed on *NMLS Consumer Access* unless they also have a MLO license. Functionality was developed so that if a Control Person is named in an action which the state regulator subsequently notes in the person's record, that Control Person will then be listed on *NMLS Consumer Access* and the regulatory action will be available for view.

IV. Additional Comments

One commenter asked for clarification regarding the ability for a state regulator to post an action against a company or individual that is not state-licensed or registered through NMLS.

⁸ A "control person" is an individual (natural person) named in a state license application that directly or indirectly exercises control over the license applicant.

SRR Response

State agencies will have the ability to post actions against any company or individual that the state regulates or who is engaged unlawfully in business activities that the state agency regulates. For example, a state may post an action against an individual who is operating as a mortgage loan originator without a license or may enter a mortgage-related action that has been taken by the state agency against a state-chartered bank.

One commenter requested that the final policy clarify their understanding that the public reporting of state regulatory actions will only apply to the mortgage industry.

SRR Response

Many of the state agencies that regulate the mortgage industry are also responsible for the regulation and licensing of other consumer finance related industries and do publish enforcement and regulatory actions concerning those licensees on agency websites. As some states begin licensing non-mortgage industries through NMLS, the ability to post regulatory actions will be an available option and states may decide to post public actions against such licensees in NMLS.

One commenter stated that it would be beneficial to provide the licensee with the opportunity to attach a PDF document for state regulators to review when viewing a posting, or for the purpose of rebutting or refuting a posted action.

SRR Response

Functionality has been to NMLS to permit licensees to upload disclosure question explanations and documents, which could include additional information regarding a regulatory action item reflected in an affirmative disclosure question that a licensee may wish to provide to a state regulator.

Questions were also raised regarding whether a state regulator should be contacted directly in the event an action is posted in error.

SRR Response

One of the major reasons that an email notification will be sent to all respondents upon the posting of a public action is to ensure that each respondent is made aware immediately of the fact that an action will be viewable in *NMLS Consumer Access*. If an error is made and an action is posted in connection with the wrong person or company, the posting state regulator should be contacted directly.

How long will posted actions remain on *NMLS Consumer Access*?

SRR Response

Each state agency will retain control over actions posted by the agency and may add and remove actions as deemed appropriate.

One commenter asked if there are provisions for notification of the posting of an action to the company that the MLO is currently employed with.

SRR Response

In addition to sending an email notification to each company and individual respondent named in an action, an email will also be sent to any company that a named individual has a Relationship with in NMLS (i.e., the current employer of the respondent).

Are there safeguards to ensure that no licensee personal information would be made publically available?

SRR Response

State and Federal laws protect the use of any personal identifying information (such as Social Security numbers, date of birth, etc.) and such data should not be made publically available. State regulatory agencies would be responsible to ensure that information posted does not violate laws protecting personal identifying information.

Will there be a process in place to ensure that regulatory actions are posted to the appropriate record?

SRR Response

The process by which a state regulatory agency will enter information about a regulatory action which is intended to be made public does contain safeguards to ensure that the information being entered is correct, that the company and individual respondents being named are the appropriate companies and/or individuals, and that duplicate information is not being entered. Within each agency, only individuals that have been granted specific user roles will be permitted to enter information regarding a regulatory action, and a separate user role has been created for those individuals who are authorized to determine whether any regulatory action information placed in NMLS may be made public. It is the responsibility of the state regulator posting an action to ensure that the action is posted against the correct record in NMLS.

ADDENDUM A

I. Fields entered by state regulators in NMLS for regulatory actions.

- Docket Number - A unique number that identifies a specific case on the court's Calendar; if the docket number is not available enter "None."
- Privacy Level (Public, Private)
- Indication of Multi-State Action (if applicable)
- Posted on Behalf of - The agency for which the action is being posted, if other than the posting agency.
- Date of Action - The date on which the action was taken.
- Action Type - A descriptive term used to identify the nature of the action.

Action Type includes:

Cease and Desist
Charges
Order
Other
Revocation

- Description of Action - The description provided for the Action Type (required if "Other" or "Order" is selected).
- Fine/Penalty Amount - The amount of the fine/penalty assessed as part of the action.
- Restitution Amount - The amount of restitution assessed as part of the action.
- Regulator Notes - Notes available to your agency and/or other Regulators based on the privacy level.
- External Notes - Notes associated to the action for the purpose of communicating information to all users, including industry based on the privacy level.
- Respondent(s)
- Artifact(s) (PDF documents)

II. Regulatory Actions Information Viewable on NMLS Consumer Access

- State Regulator
- Action Type
- Date of Action
- Multi-State ID (if applicable)
- Artifacts (PDF documents)
- Docket Number