

## **Uniform NMLS Licensing Forms and Mortgage Call Report**

*Request for Public Comments*

### **Proposal 2015-2**

July 21, 2015 – August 20, 2015

The State Regulatory Registry invited public comments on the proposed changes to the Uniform NMLS Licensing Forms and Mortgage Call Report during a public comment period from July 21, 2015 to August 20, 2015. Eleven individuals or organizations submitted comments during the comment period.

The comments are contained in this document as received, without editing. Comments received in email format were copied exactly as submitted and pasted in the comments section of the table with the submitting individual's name and company displayed. Comments received as an email attachment or via USPS are displayed as submitted in their original format. These comments are noted in the table and numbered accordingly as attachments.

Comments are listed in the order received. Comments received without full name or contact information are not included. The Forms Working Group and Mortgage Call Report Working Group will review the comments and make recommendations to the [NMLS Policy Committee](#). The NMLS Policy Committee, after consultation with all participating NMLS state regulatory agencies will make final approvals for any changes to the Uniform NMLS Licensing Forms and Mortgage Call Report and publicly respond to comments received.

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#	Date	Name & Company	Comments
1	7/23/2015	Alene DeLoach Hilton Head Mortgage Corp.	This is the most CONFUSING website I have ever had to work in .....it's not just about the mortgage call reports, it's everything about this website. And I'm not a rookie, I've been in this business for 33 years.....I also believe it does nothing for the new loan officers more than making sure they understand the penalties for violating laws...
2	7/23/2015	Kimberli Durfield Greenbox Loans, Inc.	Please improve the way branch licenses can be accessed and seen in the company account. Currently it is very difficult to find branch licenses.
3	7/23/2015	Kristi Reesman Highland Financial Company	<p>The recent addition of line AC 065 to the MCR for net changes in application amount was a very good and much needed change.</p> <p>The following changes to the MCR would be helpful and improve efficiency:</p> <ol style="list-style-type: none"> <li>1. Add a button to auto-fill zeros in each column and section for companies who never use those sections so that we don't have to type in zero and enter dozens of times to fill spaces that don't apply to our business. For example, I never use the "Received from 3rd Party" column in the Application Data Section; or the Closed-Retail Application or Closed-Wholesale Application columns, or the entire Reverse Mortgage Section. Likewise, there are other lenders who are funding lenders, so they might never use the Brokered Section. Or lenders who only do retail and no wholesale.</li> <li>2. When there is an error on one of the previous sections, please highlight the section(s) that need adjustment. Most business websites do that, it improves efficiency.</li> <li>3. The servicing released section should have a "not applicable" checkbox for Brokers or a checkbox that the broker can certify that they did not have any control over servicing rights. As a broker who does not draw docs or fund in my name, I never at any time have claim or ownership of the servicing rights on a loan, therefore I neither retain or release those rights, the lender does. Because the system requires loan values and number of loans to be in either the released or retained section, I used the released section but that is not the legally accurate answer.</li> </ol> <p>The following changes to the NMLS Website would be helpful as well:</p> <ol style="list-style-type: none"> <li>1. Make a printable, easily locatable on the website NMLS renewal certificate that is appropriate to post on a wall in an office, or provide to interested parties to demonstrate the Licensees Current Status. This should contain the licensee's name, company name, office address, effective date and expiration dates, NMLS numbers, the signature or authorization of the head of NMLS or other person authorizing license, and could also contain a blurb to consumers containing the web address of the consumer NMLS website so that the consumer can verify the information on the certificate is current. All the wholesale lenders I do business with require proof of NMLS renewal each year and there really isn't anything concise on your website for that purpose. I end up just doing a print screen of a couple of pages that contain my info.</li> <li>2. Changing the passwords every 3 months is tedious for the user and quite frankly, not the best security system for a web based interface in 2015. 2011's security procedures are obsolete now. Any hacker could continue to change the passwords once he got in and therefore lock the user out. A much better idea would be to allow the users to change passwords when they see fit and have a text alert system by which the main user could input a cell phone or email that would send an automatic message whenever that account is accessed that said something like "Your NMLS account was just accessed using your login and password. If you did not initiate or authorize this access, you should change your password immediately and contact us right away so we can take proper security measures." This absolutely lets the user protect their information in real time. The change password requirement may allow a breach to go unnoticed for nearly 90 days.</li> </ol>
4	7/23/2015	Cheryl Wills ITC Financial Licenses, Inc.	We have just had to submit an advance change notice. Once you make a change to the information, you are not given the option to leave the date the same. We sent out a formal notice to the states via USPS with the details to our organizational change, and 1 state came back and indicated an Advance Change Notice must be filed in NMLS, even though the changes we made did not match the criteria via NMLS for an ACN. This requirement came over a month after the organizational change became effective and I was not able to date the change April 1st, but had to use the current date I was entering the information into NMLS. This made the effective date over a month after the actual date of the organizational change. Therefore, this made the effective date inaccurate. There needs to be a way to enter an effective date even if it's prior to the data entry date.

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5	7/23/2015	Karen Mynatt	<p>The website in my opinion is very hard to navigate. When trying to make name owner changes several weeks ago it literally took me 2 days. The website would refer you to a link after link after link. The help tab was useless. I would call and each person I talked to would try to help but each one told me something different that I needed to do. It's very difficult to get anything done in a timely manner.</p> <p>Thank-You</p> <p>I hope this helps NMLS to make the website easier for all us to navigate. I don't use this website everyday so it's hard to remember when I do have to, because of all the links and to be honest just use plain English</p>
6	7/23/2015	Randy Johnson Independence –Pacific Corp	<p>I am pleased to respond to this proposal.</p> <p>I have spent 34 years in the mortgage business and originated 4,600 loans. The last time I had a loan denied was in 1987. I have written two books published by John Wiley &amp; Sons. I have written hundreds of articles for Internet websites and newspapers. Finally I have an MBA from Stanford. I think I am qualified to make comments.</p> <p>My opinion is that NMLS and SAFE have not, are not, and will not end up protecting consumers. You place unnecessary burden of paperwork and NMLS fees so as to collect data that no one even seems to be analyzing.</p> <p>You'd think that my experience would be enough to that I could do any test about mortgages without consulting study materials. You'd be wrong. The reason is that the Course Provider sends study materials and the subsequent test is whether you can remember inane and trivial facts from the study materials. There is no way that any of this information is a bit helpful to a Loan Originator who is being tested. The information is irrelevant to the LO's job needs.</p> <p>The mortgage Call Reports are another waste. Something is required by the poorly named SAFE act. But why a Call Report that no one pays any attention to. My California Bureau of Real Estate gives fuzzy answers to the question, "What do you do with the data?" My guess is that no one does anything.</p> <p>I pay \$700 per year to NMLS if which I believe \$500 goes to the State BRE. All it is more income for our government. Every 4 years I have to pay \$300 in brokerage license approval to them and \$2,800 to you and you send \$500 to the State.</p> <p>They were able to "supervise me" with that \$300 but now they have another \$2,000 and the level of supervision seems the same. There were 15,658 MLOs in the State and each one contributed \$200 for a total of \$3,600,000. There 4,595 companies that contribute \$300 each for a total of \$600,000. Combined we're talking more than \$4.5 million.</p> <p>Given that they have not hired anyone that these fees might support, you get the idea that maybe the whole idea behind changing from the "independent" Dept. of Real Estate to the Bureau of Real Estate was so that this extra money would flow into the State's general funds.</p> <p>I realize that I have no chance whatsoever is making any impact on NMLS. I'll bet that there are people in NMLS and the BRE who will read these comments and think I am wrong. But they are just stuck permanently in a bureaucratic mode where they believe the stuff the other people on staff have told them. It's all a myth.</p> <p>So I will go back to work, but I am happy to have gotten this off my chest</p>
7	8/3/2015	Christine Thierry PAmortgagePros	<p>I find the MCR is extremely burdensome and confusing. It is growing more invasive every year.</p> <p>Also, I only close about a loan a month and it just is too much. I should be able to complete the equivalent of a 1040 EZ, a simpler report. You really don't need all that information on such a small shop as me as it was never reported before.</p> <p>That is my feedback. It is ballooning out of control.</p>

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8	8/18/2015	Regina Kozak Habitat for Humanity of Beaver County	<p>As a small non-profit organization (Habitat for Humanity of Beaver County, PA) that originates less than 5 mortgages a year, we have found that several of the fields required in the current NMLS form do not pertain to us or our loan origination process. Our mortgage and application procedure is very different from a traditional mortgage/credit entity. For example, we receive numerous applications for one house, which is then built after a qualifying family is selected from that pool of applications. Only one mortgage will originate. Due to the nature of the current NMLS form, the information we are required to enter is not an accurate depiction of our mortgage volume or procedure. Currently, the form appears to show that we may write up to 10 to 12 mortgages a quarter because we take in that many applications. However, we actually only write one mortgage from that large pool of applications.</p> <p>The current form does not apply to nor does it accommodate our loan origination process, and the information we are forced to supply consequently appears inaccurate. Please either reconsider the requirement for Habitat for Humanity affiliates to comply with the NMLS, or consider restructuring the form to accommodate our unique business model and loan origination process.</p>
9	8/20/2015	Matt Richards National Asset Mortgage, LLC	<p>To Whom it May Concern;</p> <p>Regarding:</p> <p>VI. Dynamic MCR National Asset Mortgage, LLC believes that if current MCR requirements based on designations, (GSE approved seller/servicers vs. non GSE Seller/Servicers) is being considered for replacement, that a reasonable, minimum amount of the Licensee's volume, (loan production), and/or size of the servicing portfolio, (units/unpaid principal balance) be an absolute criteria if the recommendation is to attempt to mandate requirement of filing via the Expanded MCR. Smaller Non-GSE licensee's, such as ours, who are multi-state licensed Lender/Servicers and are currently Standard MCR filers, would find the prerequisite to file the Expanded MCR extremely onerous and resource extensive, potentially beyond their capacity. The need to institute Expanded MCR filing for entities such as ours would be unnecessary to the point of extreme. The obligation to file Standard MCR's every quarter, especially within forty-five days subsequent to quarter-end, is enough of an undertaking for Company's comparable to ours and supplies more than a sufficient amount of information, to the various state regulators, in its current format.</p> <p>VII. Comprehensive MCR to Reduce External State-Specific Reporting Since the various states' Annual report requirements differ so widely, if the attempt is to incorporate most, or all data, required in the more expansive state specific Annual reports which are still separately required by some states, should be considered carefully as to whether necessary, since a majority of the current states accepting MCR filing through the NMLS, which no longer require separate Annual Report filings, have been satisfied with the current MCR formats and the information contained therein. Continuing, unnecessary increased data submission requirements for smaller non-Agency licensees, is resource intensive, sometimes to the extent of being non-feasible.</p> <p>Thank you, in advance, for your consideration.</p>
10	8/20/2015	Costas A. Avrakotos K&L Gates LLP	See Attachment 1

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August 20, 2015

Costas Avrakotos  
costas.avrakotos@klgates.comT (202) 778-9075  
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Senior Vice President  
State Regulatory Registry  
Conference of State Bank Supervisors  
1129 20th Street, NW, 9th Floor  
Washington, DC 20036**Re: Proposed Changes to Uniform NMLS Licensing Forms and Mortgage Call Report**

Dear Mr. Doyle:

We are writing to the Conference of State Bank Supervisors ("CSBS") in response to the request for public comments on the Proposed Changes to the Uniform NMLS Licensing Forms (the "MU Forms") and Mortgage Call Report ("MCR") (the "Proposal"). We appreciate the efforts put forth by both the NMLS Licensing Forms Working Group (the "Forms Group") and the Mortgage Call Report Working Group. We welcome the opportunity to provide our comments, and hope they will be beneficial to CSBS and to users of the Nationwide Mortgage Licensing System ("NMLS").

Below we address several of the changes to the MU Forms that have been proposed by the Forms Group. Most of the proposed revisions to the Forms are beneficial and address issues that have been raised over the years. We believe they will be well received by licensees and those who must make filings in the NMLS. We comment on those proposed changes, and offer some additional thoughts. A small subset of the proposed changes need some work or raise significant issues that we believe must be given further consideration. We also offer our comments as to the issues we see with those changes. We have divided our comments into those two broad groups.

As a general observation, we did not see anything in the Proposal that indicates whether the changes will be applied retroactively. We recognize that most of the changes are prospective in nature, but we have a concern with certain of the new Regulatory Disclosures. As a general practice, licensees are expected to maintain as current the information in their MU1 Account Record. Once the new Regulatory Disclosures are added, which ask questions about certain significant past events, licensees would appear to need to answer these questions even though these questions were not a condition of obtaining a license when an application was initially filed or when a license was approved. As discussed more fully below, this could present a bit of a dilemma. If certain of the Regulatory Disclosures were not a condition of licensing in the first instance or in renewals, they should not need to now be addressed for existing licensees. There is a great degree of unfairness to require licensed companies, who have been operating for years in accordance with state law, to now be compelled to respond to questions that were not a concern to regulators when a license was first obtained. We further discuss this issue in connection with the Regulatory Disclosure changes.

## **I. Form Changes That Generally Should be Helpful**

### **Comment Section Within Company Form (MU1) and Branch Form (MU3)**

The addition of a comments field to the MU1 and MU3 has long been a change that has been favored. There are a number of reasons to include a comments field in the MU1 and MU2, as well as elsewhere in the NMLS. Such comments help convey information to the state regulatory agencies that otherwise is not communicated from the MU1, and help facilitate an understanding of what is proposed so that fewer deficiencies may be posted. Invariably, it will help expedite the processing of an application. Moreover, where a comments field has been used elsewhere in the NMLS, it has proven to be mutually beneficially.

The Proposal provides that the comments field is intended to indicate whether an amendment filing contains material changes to the record, or is for clean-up purposes, such as spelling corrections. I trust that this comments field can be used not only for spelling errors, but when mistakes are recognized in a Company's MU1 Account Record, and should be corrected, which happens from time-to-time. If the correction, addition, or deletion of any information does not require an ACN filing, and does not require a state regulatory agency's investigation, acknowledgement or approval, then the changes in an Account Record should be allowed with a comment explaining the reason for the change.

As the Forms Group has recognized that non-material changes can be made to the MU1 with the proper comments provided in a comments field, then those non-material changes should be able to be made without a new attestation that would require a licensee to check all of the other information in its Account Record to make sure that it was still current, true and complete. After all, these changes are deemed non-material, and they should not necessitate a new attestation. If an attestation did not need to accompany a non-material change in a licensee's Account Record, it would help ensure that the Account Records of licensees are kept up-to-date, as the review required to make an attestation, particularly given the proposed changes to the MU1 and MU3 attestations, would not be necessary. In the interests of efficiency and expediency for both the account administrators and the examiners with the state regulatory agencies, it makes good sense to remove unnecessary steps in the maintenance of an Account Record when the opportunity is presented. We urge the Forms Group and the Policy Committee to allow for non-material changes in a licensee's Account Record to be made without an accompanying attestation.

### **Expansion of Business Activities**

By having the Business Activities section distinguish between the "mortgage lending/brokering/servicing" categories, and the three reverse mortgage finance categories, it will provide for a clearer understanding of an applicant's or licensee's business activities. We assume that definitions appropriate for each new category will be provided. We also encourage that the Forms Group provided direction as to whether an entity that identifies a reverse mortgage categories also should designate whether or not one of the mortgage finance categories should be designated.

### **Annual/Call Report Contact Employee**

A place on the Employee Contact Information to identify a contact for an Annual Report or the Mortgage Call Report, separate from other secondary responsibilities, is welcome. We believe adding information regarding the Contact Person who is responsible for submitting and responding to correspondence or inquiries relating to the MCR and to Annual Reports is a beneficial amendment.

By adding this contact information, it should reduce the chance that a licensee fails to submit a filing in a timely manner, and will allow for a more direct line of contact between state regulatory agencies and the individuals responsible for making the requisite MCR or Annual Report filings.

### **Updates to Legal Status Section of Company Form (MU1)**

This minor change as to the legal status of a company is helpful. Direction in the NMLS Policy Guidebook (the "Guidebook") should be provided as to the legal status that should be indicated if an entity is organized as a limited liability partnership, which is not included as a type of legal status. Moreover, for entities organized under laws of another nation, we assume that the "Other" category" should still be indicated with a brief description rather than trying to designate one of the domestic forms of organization that most closely resembles the foreign entity's form of organization. Direction as to this designation also should be provided in the Guidebook.

### **Employment History Section**

The suggested changes are very welcome. To date, the Employment History has caused some unnecessary consternation when completing the MU2 and MU4 Forms. As the system requires ten years of employment history and the associated address to be indicated for the person's Record to be complete, it has often left individuals stymied as to how to complete the form and make an attestation when the person's employment record over a 10-year period was not continuous, as often is the case in today's economy. Providing for a drop-down format that accommodates non-employment history is a relatively easy fix with a great "time-savings reward." I am sure those individuals completing an MU2 or MU4 will appreciate the convenience. We also find it particularly praiseworthy that the Forms Group recognized the concerns that exist if the address information or certain non-employment information was released on Consumer Access. We recognize that the new functionality is being designed so that certain designated information will be suppressed on Consumer Access, and that only relevant regulators will be able to view that information. I trust that this limitation on the information on Consumer Access will be communicated to those individuals who will complete MU2s and MU4s to put their concerns at ease.

### **Dynamic Licensing Forms Based on License Authority and Business Activity**

We generally think the use of the Dynamic Licensing Forms will be beneficial. We also recognize that there may be an advantage to incorporating some dynamic components in the forms. As we understand, if an agency determines a particular field or section is not required given the license authority or business activities selected by a licensee, those "not required" fields would not appear within the form. To accommodate applicants seeking licensure under more than one license type, the applicant will be presented with the most stringent form based on the selected license authorities or business activities. Therefore, we would expect that if a licensee has submitted information consistent with the most stringent form, it would not need to submit information for an application that would require less stringent information. One concern we have with this functionality is to make sure applicants are not channeled into completing a more stringent form if they are not conducting activities under a license that would require a more stringent form. In addition, we would have issues with a state regulatory agency using the Dynamic Forms functionality to preclude an entity from obtaining a license if the license would provide an exemption from a second licensing statute in the state. We trust these issues will be addressed by the Forms Group as further thought is given to the structure and use of the Dynamic Forms. As the Dynamic Company and Branch Licensing Forms will not be implemented until 2017, we reserve further comment until we are presented with a more complete picture of the manner in which the Dynamic Forms will function.

**MU2 Control Person's Update**

This is another change to the forms that we have advocated. We often have had situations where a person is being asked by a state regulatory agency to complete an MU2, which would result in the person being deemed a control person for NMLS purposes, and lead to the person needing to submit certain personal disclosures required by different state regulatory agencies that would not have required the person to otherwise submit such information. If the person can submit an MU2 to meet the specific requirements of one state without needing to be designated as a control person, it would greatly relieve some tensions that unnecessarily arises in making filings in some states. It would have been best if those states amended their licensing statutes to be uniform with the NMLS, and to not require personal information of persons who do not control the licensee, but the proposed change is welcome as legislative changes are not readily achieved.

While this change in concept is a good idea so that an "MU2-caliber non-control person" does not need to submit the full range of other state required forms, we have concerns that states that do not now require MU2s of certain persons may start to request the submission of MU2s on such persons, notwithstanding that these additional folks do not control the management or day-to-day operations of their company. We trust state regulators will not move to arbitrarily require MU2s of individuals when there has been no need to have those persons submit MU2s to date.

Finally, we would encourage the Forms Group to change the way in which this group of employees is labeled. Calling them "persons of interest" suggests that these folks are under criminal investigation during an episode of CSI.

**General Usability - Advance Change Notice and Backdating**

This is another change that we believe will be well-received. There are a number of changes to a licensee's MU1 form that can and should be made without the filing of an ACN. Indeed, some of these changes cannot be made with the current ACN. This change will correct a flaw in the manner in which the ACN functions, but like many "good things," it could create an issue.

Revising the ACN to allow for its utilization in the removal of former direct owners, executive officers, indirect owners, Qualified Individuals, or affiliate or subsidiaries, and modifying the ACN to allow for the backdating of certain events, will close a gap in how the ACN can be used. However, by requiring an "Event Date" to be reported, we have concerns that companies may be held accountable for certain event changes over the which they may not have had any control. For example, if the CFO of a company unexpectedly leaves the company and there is a need for a new person to immediately assume the senior financial management responsibilities of a company, the "Event Date" will precede the date by which such a senior executive officer was vetted and approved by a state. Again, we look to the fairness of the state regulatory agencies to not sanction a licensee for taking reasonable steps to ensure that the management of a licensee is intact for certain key functions.



## II. Form Changes that Require Further Consideration

### Disclosure Question Updates

There are several proposed amendments to the Disclosure Questions of the MU Forms. The most troubling of the proposed new Disclosure Questions is in the new Company Disclosure Section for the Business Disclosures. Business Disclosure Question (M) will ask:

Has the entity or a control affiliate conducted financial servicers or financial services related business in a jurisdiction with a license/registration/exemption at a time when a license/registration/exemption was otherwise required?

We suspect that the state regulators agencies see some merit in adding this disclosure question, and we recognize that such a question is found in some state license applications. Notwithstanding what merit there may be in the question, it is an unfair and loaded question that cannot be answered with certainty and confidence in far too many situations. This new disclosure question puts the onus on applicants to determine whether certain business activities raise a licensing obligation under vague, general, or ambiguous statutory provisions, often administered without any regulatory or administrative guidance. Most state mortgage finance statutes do not provide clear direction as to the activities that require a license, and all too often the state regulatory agencies defer from providing further guidance. There is a long line of cases that regulated entities are entitled to a fair notice or warning of the requirements with which they must comply, particularly in connection with statutes that provide for criminal sanctions. We can prepare an analysis of these cases should the regulatory agencies want to review the law in this area.

There are many examples of activities related to mortgage finance activities where a licensing obligation is not clear. There isn't a week that goes by where we are not asked to address multiple questions of whether a license is needed. In a typical week, questions may be raised as to whether a license is needed to (i) conduct lead generation activities, (ii) purchase closed mortgage loans, (iii) acquire and hold mortgage loan servicing rights, (iv) conduct certain loan modification activities, or (v) conduct loan processing or underwriting activities.<sup>1</sup> Moreover, it is not uncommon for the same statutory language in the statutes of two different states to be interpreted differently by two different state agencies.

Moreover, on its face, this question is ambiguous, and its reach is unclear. If an entity originates a loan in a state where it was properly licensed to make mortgage loans, but the loan was originated by a mortgage loan originator who was not licensed, must the entity provide an affirmative response? If a licensee has received mixed responses from a state as to whether a certain business activity was subject to licensing and the entity decides to not obtain a license, how should the entity respond?

In addition, the applicant or licensee must answer this question not only for itself, but also for its control affiliates. The applicant or licensee is not going to be in a position to know, or even in a position to determine or ask, if, at the time it applies for a license, a company in its chain of ownership

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<sup>1</sup> For example, for those at the AARMR Conference, you may recall during the Ombudsman session when a representative of a company asked why states do not provide clearer guidance as to whether a license is needed to conduct lead generator activities. From his understanding of the state regulators who responded to his inquiry, he found that in many states, a license would be needed if a social security number was taken from a borrower, but would not be needed if no social security number was taken. Such information is not set out in most of the statutes he reviewed.

was engaged in a licensable financial service or a financial services-related activity at a time when a license was required. How does a licensee answer that question for the control affiliates that own the licensee when the licensee has no control over these entities? With any number of state financial services laws being amended year after year to add licensable activities or repeal exemptions, how in the world does a licensee determine the answer to such a question for its control affiliates regarding licensable activities "at a time when a license/registration/exemption was otherwise required." The Forms Group is proposing a new question that for many entities cannot be answered.

Finally, as indicated in our opening comments, we have concerns as to how this Disclosure Question will be administered for existing licensees. If these changes go into effect, will this Disclosure Question be applied retroactively, and will licensees need to go back and re-examine their activities in light of whether those activities required a license before they were licensed? Will entities be required to answer this question that was not required when they first obtained a license? Companies may have conducted activities before it was known that a statutory provision required a license, and obtained a license without being required to have answered such a question.

This new Disclosure prompts a number of questions. How does the applicant or licensee come to answer this question and make an accurate attestation? Is it sufficient if an applicant has reviewed its activities against the express statutory or regulatory language and reasonably concluded that its activities did not warrant licensing? What should a licensee do if a state agency concludes that certain activities are subject to licensing, or takes the view that certain activities require a license without ever promulgating regulations, issuing an opinion, or posting anything publicly? What is the appropriate answer if a state regulatory agency adopts a position in the future that certain activities required a license for years when an entity has been conducting those activities during those years? How does an entity defend its answer, reasonably held, if a state regulatory agency believes it should have held a license to conduct its activities or if the state regulatory agency changes its views as to whether a license is needed? The answer to this Disclosure Question could result in more sanctions against licensees when they acted fairly, reasonably, and honestly when they applied for a license. More thought needs to be given to the implications of this question, and it should be withdrawn until the concerns and the applicable law is fully considered.

Disclosure Question (K), which also is a new disclosure question under the Company Financial Disclosure section, reads:

Has the entity or a control affiliate ever failed to file income tax returns (including information returns for pass through entities) by the due date (including extensions)?"

The wording of the question is unclear. Is an affirmative answer required if an entity failed to file by the due date, but later filed pursuant to an extension, or is an affirmative answer only required if an entity failed to file by the time an extension expired? In addition to the wording of the question being unclear, we believe this question should relate back to no more than 10 years. This would be consistent with the other company-level regulatory disclosure questions. As worded, we believe this question poses an issue for entities who have: (i) a large or complex ownership structure, (ii) control affiliates who have been in business for an extended time or that date back to well before the turn of the century, or (iii) control affiliates who have merged with other companies over the years. By limiting the timeframe to within the past ten years, we believe it will alleviate the burden for applicants and licensees to track down information regarding tax filings and payments that may have been made decades before a license filing is made.

We suggest limiting the time frame from “ever” to “within the past ten years” which is the same time period covered for the amended bankruptcy questions and other regulatory disclosures. In addition, we suggest re-wording the question to read:

Within the past ten years, has the entity or a control affiliate failed to file income tax returns (including information returns for pass through entities) by the due date, or by an authorized extension if not filed by the due date?

Disclosure Question (L) asks:

Is the entity or a control affiliate past due on any income tax payment obligation, including any payment plan related to tax obligation?

The question does not provide any guidance of what it means to be past due. If there is a grace period, is the tax filing past due? If any entity has elected to make a payment late with an authorized late fee, is an affirmative reply required? Is the question intended to determine whether tax liens are in place? If so, is it necessary to seek answers regarding past due income tax obligations?

Individual Financial Disclosure Question (A)(4) reads:

Have you ever failed to file income tax returns by the due date (including extensions)?

This question is similar to the Company Financial Disclosure question (K), and presents the same issues. We suggest rewording the question to be:

Have you ever failed to file income tax returns by the due date or by an authorized extension if not filed by the due date?

The Individual Criminal Disclosure Questions (F)(1) and (H)(1) are being revised, and Question (F)(3) and (H)(3) are being added. We understand that this is being done to have the questions of (i) being convicted of a felony or (ii) being convicted of a misdemeanor stand separate from the questions of (i) having pled guilty or nolo contendere to a felony, or (ii) having pled guilty to or nolo contendere to a misdemeanor, but we do not see any reason in the Proposal as to why the state regulators believed such changes were necessary. This change will mean that control persons that have answered these questions affirmatively and been approved to serve as control persons will need to revisit the issue unless they are relieved of having to do so. What purpose is served by making such proposed changes?

With respect to the removal of the two disclosure questions involving (i) a violation of the Rules of Conduct for test takers for the MLO exam, or (ii) being under investigation for a mortgage testing violation, we note that the Proposal provides that the SRR Staff is authorized to provide a flag on an individual's record to notify state regulators of a pending or complete investigation. We trust that in such circumstances the individual is notified of the action taken.

### Attestation Language

We appreciate the SRR's efforts to allow for the submission of MU1 filings by third party individuals.

The Proposal sets out two versions of the attestation.

The Proposed Company Attestation Language reads as follows:

To the extent that the information set forth herein was collected by others, such information is not necessarily within my personal knowledge. Nevertheless, I solemnly declare and affirm under the penalties of perjury that I have reviewed the foregoing responses, have investigated them for accuracy, and that they are true and correct to the best of my knowledge, information and belief.

The Proposed Individual Attestation Language provides that:

I DO SOLEMNLY AFFIRM that I am the named person above, I am authorized to attest and submit this filing and under the penalties of perjury that the contents of the foregoing application/filing are true and correct to the best of my knowledge information and belief.

Upon review of the proposed language, we have some concerns and comments.

#### 1. Who Submits Which Attestation?

The direction as to the use of the two authorization statements needs to be more clear. We assume that the attestation statement titled "Proposed Company Attestation Language ..." is for an employee, officer, or control person of an applicant or licensee; whereas the attestation titled "Proposed Individual Language Attestation" is for third party individuals, who are not employees, officers or control persons.

The Form Group's comments to the revised attestation provides that "To compensate for third-party individuals such as compliance personnel, who file on behalf of a company who may not be actual employees or agents of the company," the attestation language will be updated. As this statement distinguishes third-party individuals such as compliance personnel, from employees or agents, we assume that agents will attest by the same form as do employees, which would be the "Proposed Company Attestation Language," as that attestation applies to one "employed" by the company, as well as officers or control persons." Whatever will be required as to who is authorized to submit the attestation should be clearly set forth.

#### 2. Conditioning the Attestation

Conditioning the attestation on the information being true and correct to the best of the attester's knowledge, information and belief, is a beneficial recognition of the realities of the attestation and consistent with the manner in which other attestations are structured.

#### 3. The Attestation Will be Difficult to Make

The requirement "investigated them for accuracy," which we understand to mean investigating matters referenced in each of the representations for, will be difficult to satisfy for the person making

the MU1 Company submission, as no direction is provided as to what is meant by that clause. Does this mean that, for all of the information in the MU1 and in each control person's MU2, the individual making the attestation has investigated all information in the Company's Record, as well as the control person's record, and determined the information to be current, true, and complete? When entering resident agent information, generally an individual would rely on information provided by the resident agent in connection with their state mailing address. Does "investigated them for accuracy" imply that the attesting person now must confirm that the information the resident agent provided is correct from a secondary source not provided by the resident agent? Does this clause mean that the individual responsible for the MU1 Record, when uploading the Company Organizational Chart that has been provided by the Company's legal team, must personally review and independently verify the ownership of the company to ensure that the information provided to them by their legal department is accurate? These examples may seem extreme, but in the absence of clear instructions as to how to satisfy the requirement of having "investigated them for accuracy," we are concerned as to the level of "investigation" that some state regulatory agencies may expect.

Moreover, the MU1 submissions are not only made at the time of application, but also are made in connection with amendments to the MU1. Some amendments may significantly change the information available in the NMLS, such as a change in direct or indirect ownership, or a change in the list of executive officers. However, some of these amendments may be rather minor, such as providing a current surety bond continuation certificate in the document uploads, or updating a telephone number for a books or records contact. No matter what the change, with the proposed language, the person is attesting that in connection with every single submission, significant or small, they have investigated the entire MU1 Company Record and MU2 Control Person Record for accuracy. For the Account Administrator of some companies, there will be an excessively burdensome task to perform every time a change must be made in the Company record. Consequently, we again suggest that the Forms Group and the Policy Committee consider allowing for certain non-material changes to the MU1 to be made without the need for an attestation.

We thank you for the opportunity to comment on the Proposal and the changes being considered for certain of the NMLS forms. We trust our comments are helpful, and that those that raise issues will be given fair consideration.

Sincerely,



Costas Avrakotos