

NMLS Mortgage Uniform (MU) Forms and Policy Guidebook

Request for Public Comments

Proposal 2011-1

January 25, 2011 – March 25, 2011

The State Regulatory Registry invited public comments on the MU Forms and Policy Guidebook during a public comment period from January 25, 2011 to March 25, 2011. Seven 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 MU Forms Working Group will review the comments and make a recommendation to the NMLS [Mortgage Licensing Policy Committee](#). The Mortgage Licensing Policy Committee, after consultation with all participating NMLS state regulatory agencies shall respond to comments received and update the NMLS Mortgage Uniform Forms and/or Policy Guidebook as appropriate.

Nationwide Mortgage Licensing System & Registry

NMLS Mortgage Uniform (MU) Forms and Policy Guidebook - Public Comments – January to March 2011

#	Date	Name & Company	Comments
1	1/25/2011	Susan Dooley iServe Companies	When there is a “YES” response in NMLS to a disclosure item, or a correction to an address, change of address, etc. it would be helpful to have our explanation and documentation downloaded to one spot in NMLS so that all regulators could see it as opposed to sending out individual notices to all. It can be very time consuming if you are licensed in 40+ states and have to send out an explanation for a change in suite number to all license regulators. This would be similar to the way financials are posted in NMLS so that all can see.
2	2/2/2011	Mark Soloman IMPAC Companies	<p>In the Expense Information section of the MU3 form, the fourth question indicates:</p> <p>“Other than the entity, is anyone responsible for the expenses or have a financial interest in the activities of this branch?”</p> <p>I would like to request clarification about this two-pronged question. Specifically, it was brought to my attention today by an attorney that the 2nd prong regarding “have a financial interest in the activities” could be loosely construed to apply to a branch manager that is paid based upon loan volume, for example, or upon some other allowable compensation plan (subject to upcoming MLO Compensation Rules under TILA/Reg Z effective 4/1/11, of course).</p> <p>I’ve never heard that interpretation before as I’ve always believed that the question was intended to attempt to identify net branching operations or to identify any other person with a financial <u>ownership/liability</u> interest.</p> <p>That said , I now see how the “have a financial interest...” verbiage could be confusing and interpreted either way. Perhaps it’s worth defining “financial interest” in the glossary of the NMLS Policy Guidebook, and/or revising the wording of the question, or even splitting it into two separate questions for greater transparency and so that entities can properly disclose.</p>
3	3/15/2011	Melissa Owen Embrace Home Loans	<p>One change that would make the MU forms much easier to use for both companies and regulators is to be able to upload pdf files regarding positive disclosure answers. The current system does not allow for this and I believe it would be much quicker for companies, MLO’s and regulators to process applications if this were available. We’ve heard that this is in the works, but the sooner the better!</p> <p>Another possible change would be to allow you to check off a button in the MU3 branch forms that says your books and records are maintained at the corporate, MU1 location.</p> <p>It would also be nice in the MU4 (MLO) forms if in the Credit Report section you could automatically check off “Use Recent Report” if there was an available report to use. The same feature would be useful for the “Use Archived Prints” in the Criminal background check section.</p> <p>Another aspect that causes problems is when a filing is older and needs to be refreshed. It creates massive problems when the information you added is lost during this refresh.</p>

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			<p>There is also an issue with state regulators. Sometimes they add a work item in the tasks, and sometimes it's only in the license itself if you click all the way down. If they add it to the license itself the company and MLO don't receive an automatic NMLS warning about the deficiency. If regulators could be informed across the board to not use this, or to add a work item as well it would be much appreciated. Or when they add to this section, perhaps a different type of automatic email? We actually had an MLO's license "Denied" due to failure to respond when we didn't even know there was something to address.</p>
4	3/18/2011	David Ginn Primerica, Inc	<p>Although not directly related to the NMLS' requested comments on the MU forms and policy guidebook, Primerica Financial Services Home Mortgages, Inc. requests that NMLS consider two functionality requests for the system:</p> <ol style="list-style-type: none"> 1. When the NMLS receives notification of a branch office change of address, we believe that the system should automatically transfer the individuals who are assigned to that branch automatically and have their addresses changed as well. This would be done without further attestation or other actions by the individuals the individuals as well. The benefit of changing this functionality is that there is less work and less chance of a mistake by the sponsoring entity and the licensed individuals. 2. The change of address input form should have an effective date for the change. Many states require advance notice of an address change and it is also good practice to submit the change of address as soon as the moving date is determined. However, the present system immediately effectuates the change of address. The benefit of having an effective date for the move is increased accuracy in the system. <p>Please do not hesitate to call if you have any questions.</p>
5	3/22/2011	Paul Deering	<p>It is my experience, based on that of a Loan Originator, licensed and actively engaged in originating 'A' Paper residential mortgage loans in the state of Florida since 1987, that the MU forms are excellent in content.</p> <p>However, the primary delivery system (NMLS website) is Extremely Flawed. It is not at all 'user friendly'.</p> <p>Therefore requires a heavy commitment of personnel (and thus cost) to guide the majority of end users (I believe those to be Loan Originators) thru the system to affect all but the absolute simplest of tasks.</p> <p>Individuals that use <u>any system frequently</u>, such as, the responsible employees at large lenders and banks who handle the registration & licensing functions, <u>will become familiar with it</u> and eventually rarely need assistance. The <u>much larger number of Loan Originators</u> who will access the site only a few times a year are being disserved by a delivery system that is not 'user friendly'. I believe the cost of developing the computer software that would make that a reality, would be more than offset by the reduced personnel needs (and thus costs savings) which results in efficiencies that would result in savings to the NMLS, and hopefully then, to the Loan Originator, and thus the American consumer, who is the one who eventually pays for the increased costs of doing business.</p>
6	3/28/2011	George Kinsel Shumaker Williams P.C	See Attachment 1

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7	3/30/2011	Costas A. Avrakotos K&L Gates LLP	See Attachment 2
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**SHUMAKER
WILLIAMS P.C.**
LEGAL AND BUSINESS COUNSEL

March 28, 2011

VIA FACSIMILE

Tim Doyle
Vice President, Mortgage Policy and Operations
Conference of State Bank Supervisors
1155 Connecticut Avenue, NW
5th Floor
Washington, DC 20036-4306

RE: Comments on the NMLS MU Forms and the NMLS Policy Guidebook

Dear Mr. Doyle,

The law firm of Shumaker Williams, PC wishes to thank the Conference of State Bank Supervisors ("CSBS") for the opportunity to comment on the above noted items. After careful scrutiny we found little that needed to be addressed. Most of the comments are relatively minor in nature and reflect the tremendous effort that went into the initial development of these documents.

The following comments are offered on the MU forms and the Policy Guidebook for your consideration.

MU 1 FORM

Disclosure question (H). Insert **mortgage servicer** after **mortgage broker** in the two places where mortgage broker is mentioned to include mortgage servicers in the question.

Disclosure question (J). Change the wording of the question to "Is the entity aware of any unsatisfied judgments or liens against it?" Define the term liens in the Policy Guidebook.

MU 2 FORM

Disclosure questions A1 and C pertain to personal financials whereas A2 pertains to financial events that took place when the person exercised control over an entity. Move both questions to another section to make it clear that the questions relate to an individual's personal finances. Additionally change the wording of C to "Are you aware of any unsatisfied judgments or liens against you?" Define the term liens in the Policy Guidebook.

MU3 FORM

No comments.

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Towson, MD 21286
410.825.5223
FAX: 410.825.5426
CAMP HILL, PA 717.763.1111
STATE COLLEGE, PA 814.234.3211
TOWSON, MD 410.825.5223
YORK, PA 717.848.5111

mail@shumakerwilliams.co

MU4 FORM

Disclosure questions A1 seems to refer to a personal bankruptcy while A2 seems to refer to a bankruptcy that took place while a person exercised control over an entity. Likewise C is connected to personal rather than business financials. Move A1 and C to another section to separate them from financial items that took place while an individual exercised control over an entity. Additionally change the wording in C to "Are you aware of any unsatisfied judgments or liens against you?" Define the term liens in the Policy Guidebook..

POLICY GUIDEBOOK

Page 10 top—insert mortgage servicer after mortgage broker.

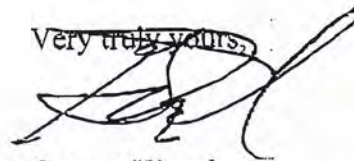
PAGE 52—Paragraph titled **FILING**—Insert **mortgage servicer** after **mortgage broker** in the first sentence. Pluralize **applicant** in the third sentence.

PAGE 73—MLOs are only able to use a mailing address that differs from their residential address if the residential address is not able to accept US Postal mail service. There may be a number of reasons for an MLO to want to receive mail at a location other than their residence. Is there a compelling reason why this option cannot be offered? Companies can receive mail at a P.O. Box as an example.

PAGE 79—Delete the portion of the paragraph below the screen snapshot that begins with the word **regardless**. MLOs that are not subject to registration are required to be licensed through the NMLS in each state where they operate pursuant to the S.A.F.E. Act.

Feel free to contact me with any questions or requests for clarification.

Very truly yours,



George Kinsel
Financial Services Consultant

cc: J. Steven Lovejoy, Esq.
Paul Adams, Esquire
Reginald Evans, Esquire
Rachel Wolf, Esquire

March 30, 2011

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VIA FEDEX

Mr. Tim Doyle
Vice President
State Regulatory Registry
Conference of State Bank Supervisors
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Fifth Floor
Washington, DC 20036

Re: MU Forms Public Comments

Dear Mr. Doyle:

We are writing to the Conference of State Bank Supervisors (“CSBS”) in response to the request for public comments on the Nationwide Mortgage Licensing System (“NMLS”) MU Forms and NMLS Policy Guidebook (January 24, 2011) (the “Policy Guidebook” or “Guidebook”). We appreciate the opportunity to provide our comments that we trust will be beneficial to CSBS and to users of the NMLS.

We are fortunate to have been in the position of working with CSBS from the introduction of the MU Forms, and we understand and appreciate the significance of the undertaking to create a uniform application and to draft and implement policies to be used by both industry and state regulators. Having done this, CSBS has met its goal to expedite and streamline the application process.

As you know, our Firm represents a number of clients who range from small regional lenders with a limited number of shareholders and a few affiliates to larger lenders who have complicated ownership structures and scores of affiliates engaged in financial service related activities throughout the world. As such, we have had the opportunity to utilize the MU Forms and Policy Guidebook in various licensing situations, and to see the issues that arise from a wide perspective.

Below, we address several issues we have encountered in working with both the MU Forms and the Policy Guidebook. For purposes of this comment letter, we do not address all the issues that we have seen over the last year, but focus on certain issues that have arisen more frequently, or that we believe are more significant. Our comments have been arranged into two categories: (i) ways in which the questions and content of the MU Forms or the NMLS filing can be improved; (ii) ways in which the NMLS Policy Guidebook can be amended to improve the content, clarity and consistent use of the NMLS.

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**I. IMPROVING THE QUESTIONS AND CONTENT OF THE MU FORMS
AND THE NMLS FILING**

The MU Forms do a good job of collecting general information required by most states. However, there are still aspects of the filings that are unclear, as well as several questions that we believe require clarification as to the information that is being requested. We address a few of the MU Form issues below.

A. USE OF THE WORD "CONTROL"

As we discussed over the years, the definition of "control" and the manner in which it is used in the NMLS and the Guidebook create uncertainty as to the information requested. We raised some of these issues in December 2008 when we commented on the MU Forms. The use of the word control raises additional questions since the enactment of the SAFE Act and the states' passage of laws to implement the SAFE Act, which incorporated the NMLS definition of control into many state statutes.

The word "control" now may be used in the NMLS or state statutes as a means to describe, among other things, (i) direct or indirect owners, (ii) management of an entity's business operations, (iii) officers who must file MU Forms, (iv) control persons, (v) qualified individuals or branch managers, (vi) exemptions for affiliates or subsidiaries of depository institutions, (vii) exemptions for registered mortgage loan originators of "owned and controlled subsidiaries" of depository institutions, or (viii) filings arising from the "change of control" of a licensee. Here is an example of one issue that engenders confusion with regulated institutions. If a state defines control of a company on the basis of holding 10 percent or more of the voting securities of a corporate licensee for purposes of reporting on an applicant's or licensee's ownership, as formed in the NMLS definition of control, and the state provides an exemption for an affiliate of depository institutions, with affiliate based on the definition of control, then an entity in which 10 percent or more of its voting securities is held by the company that owns a depository institution would be exempt from state licensing. I doubt that most states that provide for an affiliate exemption would endorse this view, but the statute may so provide.

We do not intend to comment in this letter on all of the issues we see with the indiscriminate use of the word control and the application of the NMLS definition of control to the many occasions in which it is used in the NMLS, the electronic instructions, the paper MU Forms, the Guidebook, and state statutes. For purposes of these comments, we note a few NMLS issues, but principally want to draw your attention to the unintended consequences that may arise from its widespread use, and that further consideration should be given to the implications of the NMLS definition of control in the various circumstances in which the term control is used.

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B. INCONSISTENT DEFINITION OF CONTROL

Minimally, the definition of control should be the same wherever it appears, whether it is in the paper version or the Guidebook. The paper version of the MU1 defines “control” as “[t]he power, directly or indirectly to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a general partner or executive officer, including Chief Executive, Chief Financial Officer, Chief Operations Officer, Chief legal Officer, Chief Credit Officer, Chief Compliance Officer, Director, and individuals occupying similar positions or performing similar functions; (ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 10% or more of the capital, is presumed to control that company.” The Policy Guidebook, however, includes additional guidance as to who is presumed to have control, as there is an additional provision: “in the case of an LLC, Managing Member”. As this information significantly affects the identification of the appropriate Control Persons for limited liability company applicants, the paper version of the MU1 Form, which many applicants use as a tool to populate their NMLS electronic record, should be amended to duplicate the definition provided in the Policy Guidebook.

C. CONTROL PERSON

A Control Person is defined in the Policy Guidebook as an “individual (natural person) named that directly or indirectly exercises control over the applicant.” The definition of Control Person provided on the paper MU1 Form also makes it clear that a “Control Person” is an “individual (natural person)”. There is no ambiguity that a Control Person is a natural person. The NMLS, however, does not appear to recognize the distinctions that exists between a natural person and a legal organization for purposes of the Direct Owner filing.

As the system currently operates, when an applicant identifies a person or entity as a Direct Owner, the system automatically prompts the person entering the information to identify the Direct Owner as a “Control Person,” by virtue of the ownership percentage disclosed, regardless of whether the Direct Owner is a natural person. According to the electronic message, all Direct Owners, whether a Company or a natural person, with more than 10% ownership in the applicant or licensee must be identified as a “Control Person,” despite the Policy Guidebook provision that only natural persons can be Control Persons. Then, on behalf of an applicant or licensee, a person, under oath and penalty of perjury, must make an attestation that the information and statements made in connection with the MU1 filing “are current, true, and complete.” The NMLS should not force applicants and licensees into making a false attestation by attesting that a legal organization is a natural person. Since the input field in the Direct Owners includes a distinction between an entity and a natural person, the prompt for the Control Person should only arise when submitting information for

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a natural person, and not for legal organization. The NMLS was created with this flaw and should be reprogrammed. The Direct Owners section of the electronic MU1 Form in the NMLS licensing system must be corrected so that a legal organization is not identified as a "Control Person."

D. DISCLOSURE QUESTIONS

We have found several inconsistencies between the paper versions of the MU Forms and the electronic versions of the MU Forms. While some of the inconsistencies do not have a significant impact on the question being asked, we have encountered questions in the Financial Section of both the MU2 and the MU4 that could elicit a different response between the paper application and the electronic application. Below, we set out question number 2 of the electronic version and paper version of the Financial Disclosure portion of the Disclosure Questions on both the MU2 and MU4 for your consideration.

Question Number 1 of both the paper and electronic versions of the MU2 and MU4 applications ask the same question –

(A) within the past 10 years:

(1) have you filed a personal bankruptcy petition or been the subject of an involuntary bankruptcy petition?

Question Number 2 continues to inquire about the past 10 years and asks:

Electronic Version

"(2) based upon events that occurred while you exercised control over any organization, have **you** filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?"

Paper Version

"(2) based upon events that occurred while you exercised *control* over any organization, have **any** filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?"

The electronic version of Question Number 1 and Number 2 of the MU2 and MU4 Forms essentially requests information on a personal bankruptcy twice, with Question Number 1 asking generally about a personal bankruptcy and Number 2 asking about a personal bankruptcy that was based on events that occurred while exercising control over an organization, but a personal bankruptcy nonetheless.

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Question Number 2 of the paper version of the MU2 and MU4 Forms, however, does not ask about a personal bankruptcy, but rather asks, while the individual exercised control over an entity, has the entity filed for bankruptcy. If it is the intent of the NMLS MU2 and MU4 Forms to ask the question about personal bankruptcy twice, then no change is needed. If, however, the NMLS intends to ask whether a legal organization over which the individual exercised control ever filed bankruptcy, then the electronic version of the MU2 and MU4 filings should be changed.

E. OTHER BUSINESS SECTION

An inconsistency between the Policy Guidebook, electronic NMLS instructions and the paper MU1 Form involves the “Other Business” section. Each asks a different question when it seeks to elicit information on the Other Business of the applicant or licensee (herein, the “Company,” or “companies” if plural). In Question 4 of the paper MU1 Form, the instructions require applicants to “Check type(s) of mortgage related business engaged in (or to be engaged in, if not yet active) by applicant.” These instructions are very specific, in that they only ask for those types of “mortgage related” business in which the Company is involved, which is reasonable as those are the activities that are being regulated.

The instructions in the Other Business section of the electronic MU1 Record in the NMLS asks for a much different list. These instructions direct the applicant or licensee to “[i]dentify below all type(s) of mortgage and non-mortgage related business(es) engaged in or to be engaged in by company in the jurisdictions in which you hold licenses/registrations or are applying for licenses/registrations.”

The Policy Guidebook instructions from the paper MU1 Form provide that: “[t]he applicants and licensees should indicate all lines of business the company engages in, regardless of whether those activities are undertaken in a jurisdiction in which you are applying for a license. This is meant to be a complete picture of the corporate real estate finance activity.”

Thus, we have three “Other Business” directions asking three different things (i) only mortgage-related business in the paper MU1 Form; (ii) any mortgage or non-mortgage-related business in the jurisdictions in which the entity holds or is applying for a license or registration on the electronic version of the MU1; or (iii) all lines of business in which the company is involved regardless of whether those activities are undertaken in a jurisdiction in which the entity is applying for a license, as set out in the Guidebook.

As you can see, companies inputting an electronic MU1 Record in the NMLS licensing system are given inconsistent direction as to the information sought. Companies are not quite certain what information is being requested, but, as to whatever information is being sought, it should be requested consistently throughout the MU1 Form, electronic NMLS instructions, and the Guidebook.

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There is a second item in the Other Business section that merits amendment. In the Other Business section of the electronic NMLS MU1 Form, the instructions require Companies to identify all type(s) of mortgage related and non-mortgage related business(es) engaged in or to be engaged in by the Companies in the jurisdictions in which they hold licenses/registrations or are applying for licenses/registrations. A list of types of activities and Government Sponsored Enterprise (“GSE”) authorities are provided for Companies to “check” as applicable. Categories available include “Ginnie Mae approved Issuer/Servicer”, “Fannie Mae approved Seller/Servicer” and “Freddie Mac approved Seller/Servicer”. These designations are very basic, and do not include a breakout for Companies that only hold a specific type of GSE authority, (i.e. Seller only, Servicer only, or Seller/Servicer). Thus, an applicant that maintains any GSE authority would check a box in their electronic MU1 Record in the NMLS licensing system that may not provide a complete picture of the type of approval held.

Aside from the fact that the current designations for the approval may result in an inaccurate attestation, we recently learned that this is the basis by which the NMLS will determine whether the Companies will be subject to completing the Standard version of the Mortgage Call Report (“MCR”) on the Expanded version of the MCR applicable to Companies that are subject to filing a Mortgage Bankers Financial Reporting Form (“MBFRF”). The problem is that not all Fannie Mae and Freddie Mac approved entities are required to file a MBFRF. Since these entities do not presently file the MBFRF, the quarterly financial reporting associated with the Expanded version of the MCR will present a greater burden to these entities, particularly from a data collection and programming perspective. As such, the Standard version of the MCR is more appropriate for these Companies. As we understand CSBS is aware of this issue. To address this issue, we propose the creation of sub-categories to delineate the type of GSE authority the Company holds (i.e. Seller only, Servicer only or Seller/Servicer) as well as a “check box” as to whether the Company currently is required to file the MBFRF through WebMB in connection with the type of GSE approval it holds. Such a change to the Form MU1 would relieve certain Companies of the need to file the more burdensome Expanded version of the MCR when they do not file the MBFRF.

F. INDIRECT OWNERSHIP

The instructions related to the disclosure of indirect shareholders continues to confuse many NMLS users. The Policy Guidebook provides that in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25 percent or more of a class of voting security of that corporation should be reported. The Policy Guidebook further provides that the applicant shall continue up the chain of ownership (or “up the ladder” as stated in the Guidebook) listing all 25 percent or more owners at each level of ownership, until certain institutions or a natural person is reached (discussed further herein).

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We suggest that this direction has been interpreted in widely different ways by Companies completing the Indirect Ownership page of the NMLS. We can explain sentence-by-sentence as to why it may be misinterpreted, but with these comments, we simply, again, want to ask that CSBS and the states consider what information is necessary of the indirect owners.

As worded, and currently applied by certain states, this requirement could produce a disproportionate reporting obligation for indirect shareholders. Here is an example. A direct owner of a licensee that has an eight percent direct interest in a licensee is not required to be disclosed. However, if this eight percent interest is held through an intervening holding company in which the person holds 25 percent or more of the interest in the holding company, the person would need to be disclosed through the NMLS. This requirement goes beyond what is required to be submitted under many state statutes.

An entity should not need to be reported if it does not hold a 10 percent or more direct or indirect interest in a licensee because the states, as a matter of policy, I would think, have agreed that such an entity does not have "control" of the licensee as that term is defined in the NMLS. This should be sufficient for determining whether an indirect owner needs to be disclosed. However, as now required in the NMLS, if the entity holds 25 percent or more of a holding company "up the ladder," the entity still must be identified. If an entity does not have control of a licensee because it does not have a 10 percent indirect interest in the licensee, then such an entity does not somehow regain "control" of a licensee because it holds a 25 percent interest in a holding company "up the ladder" from the licensee. Again, we strongly encourage CSBS and the states to revisit the need for this requirement if an entity does not have 10 percent direct or indirect interest in a licensee.

II. IMPROVING THE CONTENT, CLARITY AND CONSISTENCY OF THE GUIDEBOOK

The Policy Guidebook has helped to provide guidance with respect to understanding the information being requested in certain areas of the NMLS. The Guidebook has allowed users of the NMLS to walk through the NMLS section by section while at the same time providing instructions as how to complete each section. However, we have encountered some issues with the Policy Guidebook that arise from inconsistencies with (i) the instructions provided to NMLS users, and (ii) certain definitions requiring greater clarification. We comment on a few.

A. INSTRUCTIONS REGARDING AFFILIATES

There are conflicting instructions in the electronic version of the MU1 and the Policy Guidebook that make it difficult to determine the "Affiliates" to be identified. In the "Control Information" section of the electronic version of the MU1, the following question is asked: "Is this entity under common control with (affiliates), or exercising control over

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(subsidiaries), any other entities that also provide mortgage-related or settlement services? If yes, you must provide the information requested in the Affiliates/Subsidiaries section.” To be clear, the term “Affiliate” is defined in the Policy Guidebook as “[a]n organization that is under common control with the applicant.” Therefore, pursuant to the instructions provided in the electronic MU1 record of the NMLS licensing system, and utilizing the Policy Guidebook’s definition of “Affiliate,” applicants and licensees should identify each company under common control that provides mortgage-related or settlement services in the “Affiliates/Subsidiaries” section of their electronic MU1 record.

The instructions on page 28 of the Policy Guidebook, however, confuse the issue. With respect to the question on Affiliates or Subsidiaries, the instructions state “[t]he applicant or licensee should answer “Yes” to this question if the company is owned by another company or owns other companies that provide mortgage related or settlement services.” As the instruction is worded, an applicant or licensee is compelled to answer “Yes” if the applicant or licensee is simply owned by another company regardless of whether the company that owns the applicant or licensee also owns other entities engaged in mortgage-related or settlement services. Moreover, the Policy Guidebook instructions introduces new terms to consider in answering this question, using the words “owned” and “owns” to elicit answers, which terms are not defined. The instructions, however, reference the Glossary’s definition of “control” to answer this question. Therefore, should an applicant base its answer to this question on “ownership” or “control.” A company may have ownership of another entity, but it may not have control over the other entity.

This part of the NMLS also asks “Are there any indirect owners of the entity required to be reported? If Yes, you must provide the information requested in the Indirect Owners section.” The NMLS is clear, as the reporting of indirect owners is required only if there are indirect owners, which would be determined by the Indirect Owners section of the NMLS. The Guidebook, however, provides that the applicant or licensee “must respond “Yes” to this question if you have any indirect owners,” and not indirect owners that must be reported. The Guidebook should be clarified to be consistent with the NMLS instructions.

Finally, with respect to identifying the affiliate of an applicant or a licensee, we continue to believe, as we discussed in the CSBS Conference in Orlando, that requiring identification of all affiliates is excessively broad, and makes it difficult for small companies who may be affiliated with scores of other companies owned by firms with a global presence to identify and keep current in the NMLS all affiliates worldwide that are engaged in mortgage-related or settlement services. When we raised this issue in the Ombudsman session at the Conference, no explanation was offered as to the purpose that is served by a question with such broad application. We continue to encourage CSBS to re-evaluate the need for such a question and determine whether its scope can be applied in a more limited and targeted manner.

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B. INSTRUCTIONS REGARDING JURISDICTION PARTICIPATION

In reviewing the Jurisdiction Participation section, it is unclear how an applicant or licensee would respond correctly based on the various instructions provided on the paper MU1 Form, on the electronic MU1 Form in the NMLS licensing system, and in the Policy Guidebook. The paper MU1 Form and instructions on the electronic MU1 Form in the NMLS licensing system appear to apply only to those jurisdictions where a company maintains a license/registration, previously maintained a license/registration, or intends to apply for a license/registration. Both sets of instructions are directly related to a license or registration.

The instructions in the Policy Guidebook, however, require something very different. The Policy Guidebook instructs applicants to “indicate all jurisdictions in which they perform business regardless of whether or not they hold states licenses in those jurisdictions...” Utilizing the Policy Guidebook instructions, an applicant or licensee would need to identify all states where it “performs business,” regardless of whether (i) the activity is subject to licensing in the state, (ii) the entity is licensed or registered, (iii) the entity was previously licensed or registered, (iv) the entity intends to apply, or (v) the entity is exempt from licensing.

Use of the term “perform business” in the Guidebook is particularly troublesome. An entity may perform certain mortgage finance activities in every state, but the activity is not subject to licensing in each state. For example, an entity may be servicing, purchasing, selling, funding, processing or underwriting mortgage loans in every state, but those activities are not subject to licensing in many states. For an entity that merely purchases mortgage loans in the secondary market, the instructions would compel the entity to check off each box. If the state does not license the activity, there is no reason to force a company to identify the state as one in which it “performs business.” The Guidebook instructions should be consistent with the MU1 Form.

In addition to the confusion about whether or not to disclose those states where a Company may not be licensed, there is some confusion as to what licenses need to be disclosed. The paper MU1 Form appears to limit the question to those jurisdictions in which the Company performs mortgage brokering, lending or servicing activities. The electronic MU1 Form instructions in the NMLS, however, do not limit this question to mortgage finance activities. By directing an applicant or licensee to “select the jurisdiction(s) where you have applied for a license/registration, are currently licensed/registered, or were formerly licensed/registered,” without expressly limiting this question to mortgage finance activity, and with the Guidebook instructions directing the applicant or licensee to indicate all jurisdictions in which it “performs business,” an entity may conclude that it should check the box for any jurisdiction where the entity holds, held, or intends to hold any license or registration for any business activity.

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We recognize that the states may be moving to license other consumer-finance activities through the NMLS, such as collection agency, sales finance, or non-mortgaging consumer lending activities, but until such time, we recommend clarifying that the jurisdiction participation is limited to where an entity is or was licensed or registered, or is filing for a license to engage in residential mortgage finance activities. The activity should be limited to those residential mortgage finance activities that are subject to licensing in the state in which the entity seeks to conduct such activities, and should be limited to identifying the states where the entity is or will be conducting such residential mortgage finance business under a license, or previously conducted such business under a license.

C. DEFINITIONS

The Policy Guidebook would better serve its users by expanding or clarifying several of its definitions. We address one of the definitions that engenders a fair amount of questions.

1. AFFILIATE

The Policy Guidebook defines the term “affiliate” to mean an organization that is “under common control with the applicant.” When the term affiliate is used in certain sections of the Guidebook, however, it is used in a parenthetical to mean common ownership. “Common ownership” is not defined. However, as the definition of “affiliate” uses the term “control,” then, for NMLS purposes, some users of the system would consider that the term affiliate would include entities that are owned 10 percent or more, directly or indirectly, by the same parent company. The term subsidiary is not defined in the Glossary, but when used, it generally is designated as an entity that is under the control of another. The term subsidiary should be defined in the Glossary.

Using a 10 percent common ownership test to define an affiliate or a 10 percent ownership test to define a subsidiary is inconsistent with the manner in which some states have defined those terms, and is inconsistent with the definitions of each term as defined under Federal banking law, including under the Federal Deposit Insurance Act and the Bank Holding Company Act. While applicants or licensees may know of affiliates under a 25 percent or more common ownership test, they may not know if there are any “mortgage or settlement service” affiliates under a 10 percent common ownership test. We strongly encourage CSBS to define an “affiliate” and “subsidiary” to be based on a percentage of ownership that is consistent with that found in federal banking law, which largely is based on a 25 percent or more ownership test. We can further discuss this issue, should you desire to have us do so.

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D. MAKING AMENDMENTS TO THE GUIDEBOOK

When changes and amendments to the Policy Guidebook are made, CSBS must make sure that those changes are clear and consistently reflected throughout the Guidebook. A recent change in the Guidebook shows our concern. To be consistent with the decisions made when the NMLS was being created, the January 24, 2011 Policy Guidebook now provides the following direction on the “Indirect Owners” page of the Guidebook:

Continue up the chain of ownership listing all 25% or more owners at each level of ownership. Once a public reporting company, a credit union, a bank or a holding company [regulator] by a federal banking or credit union regulator, or a natural person is reached, no ownership information up the chain of ownership need be given.

Although helpful, this amendment to the Guidebook has created a few issues.¹ First, the words bank and federal banking regulators are not defined. We assume that bank means a national bank, a federal savings bank or its equivalent, a federal savings and loan association or federal savings association, a state-chartered bank, or other entity whose charter provides deposit-taking authority and the entity are regulated by a federal banking regulator. We also assume that the term bank holding company includes a savings and loan holding company. Finally, we assume that federal banking regulator would include those federal agencies set out in the SAFE Act, which include the OCC, OTS, FDIC, Federal Reserve Board, and the NCUA. If so, it would eliminate uncertainty if the Glossary defined the terms, as the Indirect Owners page does not. The definition of “Control Affiliate” in the Glossary of the Guidebook identifies these agencies, but also could use further clarification.

Second, this amendment to the Indirect Owners page should be reflected in the other instructions on the Indirect Owners page, and elsewhere in the Guidebook, to minimize the confusion. The “Individual or Company” instruction is now inconsistent with this amendment. This instruction directs an applicant or licensee to “... continue up the ownership chain (or “ladder”), reporting those with 25% or more ownership interest at each level, until the reporting reaches a publicly traded entity, or the last natural person.” This instruction also states that “[a]ll indirect owners of 25% or more should be identified, regardless of the applicant’s business structure.” This is inconsistent with the amended language. As the Guidebook was amended to report indirect owners only up to a bank and bank holding company, among others, the “Individual or Company” instruction also should be amended to be consistent.

Finally, we note one issue that we expected to see in the NMLS Guidebook when it was reissued, but was not found. In connection with the violation of a city ordinance, we

¹ We assume the bracket word “regulator” should be “regulated.”

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wrote to K. C. Schaler, Supervising Examiner with the Idaho Consumer Financial Bureau, regarding the proper reporting of this infraction. The failure to provide a disclosure related to the sale of real estate was categorized as a misdemeanor under this ordinance. We believed this misdemeanor was consistent with a traffic-related misdemeanor that does not need to be reported in the criminal disclosure section of the MUI Disclosure Questions. In a letter dated October 4, 2010, Ms. Schaler responded on behalf of other state regulators with whom she had discussed the matter, and it was agreed that this infraction did not need to be reported as a criminal misdemeanor, but that it should be disclosed in Section F of the Form MUI. According to her letter, the State Regulatory Registry was directed to update the Guidebook to reflect this decision. The January 24, 2011 Guidebook does not show the clarification in defining misdemeanor in the Glossary, and we trust that the Glossary can be so amended.

We hope our comments are useful to CSBS. Our comments were a collaborative effort from our group, with Jeff Prost taking the lead to prepare the comments with thoughts and examples offered by Stacy Riggan, Robin Gieseke, Dana Lopez and myself. We would again like to express our gratitude for being provided the opportunity to comment. Should you have any questions regarding any of our comments, please contact Jeff at (202) 778-9364 or via email at Jeffrey.prost@klgates.com, or contact me at (202) 778-9075 or via e-mail at costas.avrakotos@klgates.com.

Sincerely,



Costas Avrakotos