

May 31, 2021

Tim Doyle
Senior Vice President
Conference of State Bank Supervisors
1129 20th Street NW, 9th Floor
Washington, DC 20036

Re: NMLS Modernization – Request for Comments

Dear Mr. Doyle:

On behalf of the American Financial Services Association (“AFSA”),¹ thank you for the opportunity to provide comments on the NMLS modernization proposal. We appreciate and share your goal of building a new system that streamlines the license application process and creates an optimized user experience. With more states expanding the use of NMLS for various license types, we welcome a streamlined process with flexibility of centralizing information and allowing for more efficient use.

Networked Licensing

While we welcome a streamlined process for licensing, we believe the outlined approach leaves several questions unaddressed. For example, the proposal does not address how the lead agency is chosen. Because different states have different approval times, possibly a week or several months, what if Phase 1 approval is delayed in a state with a slower approval time frame? As proposed, we are concerned that these differences may result in certain states getting bogged down with higher volumes of request because of perceived faster approval times. Accordingly, we believe Phase 1 should have basic and standard requirements for each state, which will allow all states to clear Phase 1 in the same reasonable time. Finally, we are concerned that states with more stringent requirements may not accept approval of a state with an approval process perceived as easier, so we believe the system would benefit from guaranteed participation by all states.

Identity Verification

We support higher security standards as part of the verification process, but we also recognize that this may create difficulties for companies that use internal specialists to assist in the process. If the specialists cannot also access the account due to the multi-factor authentication then there may be some efficiency lost in the process. For this reason, we support added flexibility that would come from allowing a company to designate and assign certain limited permissions to certain accounts to access information on behalf of an individual to continue assisting with the process.

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

Security of Information

Historically the NMLS has facilitated license application and renewal processes; over time this expanded from mortgage licensees, and today covers a variety of lenders, including vehicle finance companies and small lenders. As the technology is leveraged for uses beyond license administration, where information to be shared includes customer information, new risks need to be considered and addressed. In this context the NMLS/SES system serves a unique role. The system is managed by a third party that is engaged by the states but is separate and distinct from the states themselves. Because regulated entities are effectively required to submit information through the system, we believe further assurances of the safeguards and controls in place to protect the information being shared are necessary.

In the unfortunate event of a breach, duties and responsibilities to investigate and contain the breach, notify affected parties, and provide redress are not defined, which could potentially lead to delays in responding, and as a result, potential risks to consumers. Much of this burden may fall on the regulated entity despite the regulated entity having no control over the system or its controls. If the NMLS/SES system is to be leveraged to help facilitate exchange of information—for example, examinations that include sharing of customer nonpublic personal information—multilayered safeguards consistent with the strictest industry standards and assurances verifiable through third-party audits should be in place to meet legal obligations and expectations and ensure nonpublic personal information of customers is safeguarded and protected. Additionally, because regulated entities do not have a means to ensure the safeguarding of information, we request a clear statement indemnifying regulated entities for breaches where the regulated entity is not at fault for the breach. Today, regulated entities must agree to NMLS/SES terms as is, with no opportunity to negotiate, audit or ensure by contract that adequate safeguards will be maintained.

Licensed lenders are generally covered by state and federal privacy laws, requiring that if information is shared with a non-affiliated third party, the sharing must be covered by a contract prohibiting the third party from disclosing or using the information other than for specified purposes, and oversee service providers by taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards re: customer information, and take steps to ensure that their service providers safeguard customer information in their care. The required use of the NMLS/SES system creates unique concerns, where regulated lenders may be required to share sensitive information with a third party without having any ability to take similar precautions, and without any similar assurances. Given the scope of data that may potentially be routed through this system, having a regular independent review (e.g., a SOC-2) of data security and privacy controls of the NMLS/SES system would provide both regulators and regulated entities using the system some comfort as to protection of information being shared. To ensure timely and appropriate handling in the event of a breach, defining roles and responsibilities between the regulator, regulated entity and NMLS/SES provider in the event of a breach is critical.

NMLS User Experience

Based on feedback from AFSA members, we believe the following upgrades or minor system changes would improve the overall user experience.

Structure of NMLS

The Exam Contact should be listed on the Company Snapshot. The Company disclosure questions and responses should be visible on the Composite View. In the Financial Statement Resource Center, the spreadsheet (SS) showing financial requirements should be reviewed to ensure it is correct. For each state under "State Licensing Requirements" on the Requirements Checklist, add a "Renewals Link" for easy viewing of renewal requirements. Updates to individual information on MU2 Relationships should only have to be made in one place rather than multiple places.

Complaints

States should be encouraged to send complaint response requests to the complaint email address listed on NMLS. Some states on NMLS currently send to the company or licensing contact, instead of the complaint address directly, which may slow the response time.

Licenses

Licenses should be available to print on NMLS, rather than on a separate state website. This will make it easier to post physical copies in those states that require it.

Financials

A state requiring company financials that other states don't require should be the only state allowed to view the financials. The Statement of Financial Condition (SFC) should not be required since annual financial reports are filed each year. If the SFC continues to be required, it should be in a separate section from the Mortgage Call Report.

Renewals

Companies should have the ability to complete all renewals on NMLS. Some states currently include an additional requirement to renew separately on state websites, making the renewal process more difficult. Additionally, non-mortgage licensees should not be required to file Mortgage Call Reports showing zero activity.

MU 2 Associations

The process of adding Branch Managers and Control Persons to company is cumbersome with several intermediate steps between the company and the Control Person or Branch Manager. We believe that reducing the number of steps from four to two would allow for a much more streamlined approach.

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss further, please do not hesitate to contact me at 202-469-3181 or mkownacki@afsamail.org.

Sincerely,



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