

August 22, 2022

Jim Payne
Ombudsman, Nationwide Multistate Licensing System
1129 20th Street NW, 9th Floor
Washington, DC 20036

Re: NMLS Disclosure Questions

Dear Ombudsman Payne:

On behalf of the American Financial Services Association (“AFSA”)¹ thank you for the opportunity to provide comments on the proposed NMLS disclosure questions. We appreciate and share your goal of modernizing the NMLS disclosure process. With more states expanding the use of NMLS for various license types, a streamlined and efficient process will be more important than ever. We welcome the majority of the new and revised disclosure questions but request clarification regarding implementation and the scope of certain questions.

Implementation

We request clarification regarding the implementation of the revised questions. Will licensees be required to update their current responses previously submitted to NMLS to address these new and amended questions, or would the new questions be addressed during a new license application or license renewal? If licensees must update their current submission, will CSBS provide a formal deadline to submit updated responses?

Company Disclosure Questions

We have a few suggestions regarding the company disclosure questions:

Civil Judicial Disclosure Questions:

Questions 1 and 3 are potentially too broad. The current nor revised glossary of terms does not provide a definition of “financial services activity” or “financial services civil action.” We believe the intent of this questions is to ascertain potential violations of the law, and not common business practices such as vehicle repossession that may be challenged by a consumer. As such, this question needs to be more specific about the types of activities against which a company has been enjoined.

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.

2. Are there any pending financial services civil actions against the entity or a control affiliate that allege the entity or control affiliate:
 - a. made a false statement or omission?
 - b. had been dishonest, unfair or unethical?
 - c. violated a financial services statute or regulation?

As above, this question does not provide a definition of “financial services civil action,” potentially opening up a broad interpretation that does little to advance the intent of the question. In the context of certain transactions, a business or consumer may allege that a finance company has made "unfair" or made false statements, but such allegation may have little merit. There is little benefit to disclose that a civil plaintiff “alleged” any of these things if a civil suit is still in litigation and no judgment has been entered.

Financial Disclosure Questions

11. Does the entity have any unsatisfied liens against it?

We believe this question should be reworded to say “unsatisfied, involuntary liens.” As currently written, “unsatisfied liens” would arguably include any pledge of collateral, including the chattel paper that a company has pledged to lenders as security for the company’s own lending activity.

12. Has a third-party service provider notified the entity or a control affiliate of its intent to modify or cancel an arrangement with the entity or a control affiliate that would materially alter the entity’s ability to conduct its business activities for the license it holds or intends to hold?

We believe that this proposed question should not be a standard license application question. Instead, this should be a requirement to update a license application if this happens during the course of the reviewal process of a license application. Furthermore, as written we this question is overly broad. Just because a service provider notifies an entity of an intent to modify or cancel an arrangement does not mean that the arrangement will in fact be cancelled. There may be contractual protections in place that prevent the third-party from modifying or canceling the arrangement. In addition, the entity may have business continuity plans in place to prevent any interruptions to the business.

If this question is retained in the final draft, we instead suggest changing the question to: “Has a third-party service provider modified or canceled an arrangement with the entity or a control affiliate such that the entity’s ability to conduct its business activities for the license it holds has been materially altered, for which there is no business continuity plan in place to ensured continued services?”

Regulatory Action Disclosure – Part I - Questions

15. Is there a pending regulatory action, either administrative or civil, against the entity or a control affiliate that alleges or could result in a finding that the entity or control affiliate has...

The language “could result in a finding” is overly broad and very speculative. We suggest removing “or could result in a finding” from the question, leaving the question to focus on allegations.

Regulatory Action Disclosure – Part II - Questions

22. Have any key individuals or control individuals identified in the entity’s NMLS record ever had a financial services license or any other professional license revoked, suspended or restricted?

The inclusion of “any other professional license” is overly broad. We suggest limiting the question to whether these individuals have ever had a financial services license revoked, suspended or restricted.

Glossary

“Key Individual” is a newly defined term. The proposed definition in the Glossary is as follows: “A key individual within an entity includes the Highest-Ranking Executive and individuals who can exercise control by virtue of ownership, a leadership role, or responsibility for establishing, maintaining and approving policies and procedures for denoted functional areas.”

This definition is very broad. While licensed entities generally monitor the activities of their senior leadership and senior management personnel, including those who maintain policies and procedures could bring employees within the purview of the question who do not have key or senior roles within the company.

We suggest revising the definition to: “A key individual within an entity includes the Highest-Ranking Executive and individuals who can exercise control by virtue of ownership, an officer or director role, or other senior management role.”

Individual Disclosure Questions

In general, our members have concerns over the confidentiality of responses to these individual disclosure questions, as some answers to these questions may include sensitive personal information.

On questions pertaining to control activities, we would like to request clarity on the timeframe to disclose actions that are “based on activities that occurred while you exercised control over an organization.” Without a clearly defined timeframe, there is uncertainty over the information a former control person would have to address. For example, if an organization faced civil action

on a matter decided by a former president months after he or she left the company, would the former president need to address this, even if they do not have access to full information on the suit due to no longer being with the company?

Furthermore, on the civil judicial disclosure questions (questions 23 and 24), we request clarity over the definition of “financial services activity”, echoing our concerns around common business practices like vehicle repossession, as outlined above regarding company disclosure questions 1 and 3.

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

Sincerely,

A handwritten signature in blue ink that reads "Matthew Kownacki". The signature is written in a cursive style with a clear first name and a last name that is partially obscured by a flourish.

Matthew Kownacki
Director, State Research and Policy
American Financial Services Association