

Date: October 18, 2012

Subject: Disciplinary Action Functionality added to the Nationwide Mortgage Licensing System and Registry

On October 22, 2012, the functionality of the Federal Registration component of the Nationwide Mortgage Licensing System and Registry (NMLSR) will be updated to accommodate the collection of information about certain disciplinary, enforcement, and other actions against a mortgage loan originator (MLO). Such information must be provided by each MLO or on behalf of the MLO by the covered financial institution that employs the MLO pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act or the Act) and implementing Regulation G.<sup>1</sup>

The SAFE Act was enacted to increase uniformity and enhance consumer protection, among other things, in the residential mortgage industry through the establishment of the NMLSR. One objective of the NMLSR is to provide “consumers with easily accessible information, offered at no charge..., regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.”<sup>2</sup> Under Regulation G, a covered financial institution must submit to the Registry on behalf of each MLO, or require the MLO to submit, information pertaining to:

- Criminal convictions involving dishonesty, breach of trust, or money laundering against the MLO, or organizations controlled by the MLO, or agreements to enter into a pretrial diversion or similar program in connection with the prosecution of such offense(s);
- Civil judicial actions against the MLO in connection with financial services-related activities, dismissals with settlements, or judicial findings that the employee violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement;
- Actions or orders by a State or Federal regulatory agency or foreign financial regulatory authority that:

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<sup>1</sup> See 12 C.F.R. Part 1007. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for the SAFE Act to the Consumer Financial Protection Bureau from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, the Federal Deposit Insurance Corporation, (collectively, the Federal Banking Agencies) and the Department of Housing and Urban Development, effective July 21, 2011. See sections 1061 and 1100 of the Dodd-Frank Act. The Dodd-Frank Act also granted the CFPB rulemaking authority pursuant to the SAFE Act with respect to employees of institutions regulated by the Farm Credit Administration. See section 1100 of the Dodd-Frank Act. On December 31, 2011, CFPB published for public comment an interim final rule establishing a new Regulation G at 12 C.F.R. Part 1007, which generally incorporates and consolidates the requirements of the Federal Banking Agencies’ and the Farm Credit Administration’s largely identical regulations under the SAFE Act.

<sup>2</sup> 12 U.S.C. § 5101(7).

- Found the MLO to have made a false statement or omission or been dishonest, unfair, or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked, or restricted;
- Are entered against the MLO in connection with a financial services-related activity;
- Denied, suspended, or revoked the MLO's registration or license to engage in a financial services-related activity; disciplined the MLO or otherwise by order prevented the MLO from associating with a financial services-related business or restricted the MLO's activities; or
- Barred the MLO from association with an entity or its officers regulated by the agency or authority or from engaging in a financial services-related business;
- Final orders issued by a State or Federal regulatory authority or foreign financial regulatory authority with respect to an MLO based on violations of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct;
- Revocation or suspension of the MLO's authorization to act as an attorney, accountant, or State or Federal contractor; and
- Customer-initiated financial services-related arbitration or civil action against the MLO that required action, including settlements, or which resulted in a judgment.<sup>3</sup>

Under the current functionality of the Federal Registry on NMLSR, MLOs only disclose whether they have been subject to one of the above actions. The new functionality that will be added on October 22, 2012, will require MLOs to provide certain additional information regarding the disclosed action(s). Furthermore, under the new functionality, state regulators will be able to link state regulator actions to an MLO's Federal registration.

Starting on October 22, 2012, MLOs required to be registered under Regulation G that answer "Yes" to any disclosure question related to the above actions on their initial registration or annual update will be required to provide additional information in NMLSR. MLOs will be required to provide the **Type of Action** that was taken (e.g., Criminal Conviction, Civil Judgment, Cease and Desist from a Regulator, etc.), the **Authority** that took the action, and **Documentation** relating to the "Yes" disclosure. (With respect to the **Documentation** component, however, in connection with civil or arbitration matters involving documents that are subject to a valid confidentiality agreement between the parties and that are not otherwise submitted to a court or made public, or with any matter involving documents subject to a valid protective order, such documents may be redacted in accordance with such confidentiality agreement or protective order.) MLOs will also have the option to provide a brief narrative explanation if they opt to provide further explanation about the action.

Other things to be aware of with regard to the new functionality that will launch on October 22, 2012:

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<sup>3</sup> See 12 C.F.R. § 1007.103(d)(1)(iii)-(viii).

- **Your responsibility if you previously answered “Yes” to a disclosure question:** MLOs that previously answered Yes to a disclosure question continue to answer disclosure questions as they currently exist. Once the new functionality is implemented on October 22, 2012, MLOs should go back into the NMLSR and update their profile, providing all additional information necessary under the new functionality. MLOs that opt not to voluntarily update their profiles at this time will be required to update and provide the additional required information to complete their annual update.
- **The deadline for submitting newly required information:** All new MLOs will be required to provide additional information for each ‘Yes’ answer to a disclosure question beginning on October 22, 2012. MLOs that are currently registered in the NMLSR will be required to update their profiles during their next annual update after October 22, 2012.
- **Criminal and Civil Court Action:** If an MLO selects a Criminal or Civil Court Action, a pre-populated list of Type of Actions consistent with Regulation G will be provided in a drop down box. However, a similar drop down box is not provided when the MLO selects either Criminal or Civil Court as the Authority. Rather, the MLO will be provided with a free-form narrative box where he or she can enter the court where the proceeding occurred. This information can generally be ascertained from the first page of the final court filing, which will now be required to be uploaded in order to complete a registration.
- **Actions by a State Regulator.** For actions taken by a State regulator, MLOs will need to type in the name of the State regulator that took the action. This will generally be available on the top of the order or action from the State regulator. Additionally, if an MLO was previously licensed by a state, and has a disciplinary action against him or her on the state registry, State regulators will also be able to link the state action to the Federal Registry.
- **Documentation Required.** Consistent with one of the stated objectives of the NMLSR under the SAFE Act (to provide free, easily accessible information about these actions to consumers), the new functionality will require MLOs to upload the final order, judgment, or settlement or other agreement for the action. (However, as noted above, in connection with civil or arbitration matters involving documents that are subject to a valid confidentiality agreement between the parties and that are not otherwise submitted to a court or made public, or with any matter involving documents subject to a valid protective order, such documents may be redacted in accordance with such confidentiality agreement or protective order before they are uploaded.) MLOs will have the ability to upload one PDF document with a 8 MB file size limitation. This means that MLOs can combine additional documentation into the single PDF document if it helps to explain the action. However, the most relevant document (e.g., the final order, judgment, or settlement agreement) should be at the front of the file.

## **What's Next?**

Beginning on October 22, 2012 through the beginning of February 2013, the above information pertaining to disclosure responses, including the uploaded documentation, will only be available for view by Federal regulators. This will allow additional time to identify issues with the system development, as well as field questions that may arise from MLOs trying to comply with the new requirements. In March 2013, additional functionality for the NMLSR consumer access is planned, which will allow the public to view the information pertaining to the disclosure responses, including the uploaded documentation, described above.<sup>4</sup>

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<sup>4</sup> MLOs authorize the release of this information pursuant to 12 C.F.R. § 1007.103(d)(2).