One for All, All for One

BY JOHN VONG

Lenders are finally getting a single licensing system for all states. It isn't perfect, but it is here.

An effort by states to develop a nationwide system for licensing mortgage originators has been validated in a little-known section of the Housing and Economic Recovery Act for 2008 (HERA).

Title V of HERA, the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), requires all residential loan originators to be either state-licensed or federally registered. Those employed by a federally insured depository, any credit union or an owned or controlled subsidiary that is federally supervised must be registered. All others must be state-licensed.

More importantly, the law specifically requires that all licensed and registered originators be registered with the Nationwide Mortgage Licensing System and Registry (NMLS) maintained by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR), both based in Washington, D.C.

CSBS is the national organization for state banking, representing banking supervisors in 50 states, the District of Columbia and the U.S. territories, who oversee some 6,300 state-chartered financial institutions. AARMR is the national organization of state regulators who oversee the residential mortgage business.

It is rare for Congress to endorse a state-operated regulatory mechanism such as the NMLS. But the states have been so successful at developing and implementing a system to create a centralized licensing system that federal lawmakers found it difficult to ignore. So instead of creating its own system, Congress simply built on one that is already in place.

It also is rare for lawmakers to make life simpler for the industry. But in this case, HERA pretty much does that for mortgage lenders. By using technology, a largely paper-based licensing and registration process that used to span multiple regulatory agencies in each of the 50 states and the District of Columbia will be condensed into a single electronic system.

The law requires that every state have a system in place by July 31 that meets certain national definitions and minimum standards that, among other things, includes: pre-licensing education and testing; continuing education; criminal history; and credit background checks. Furthermore, all states are compelled to license originators through NMLS.

The Department of Housing and Urban Development (HUD) is charged with determining if a state's licensing requirements are up to snuff, and that it participates in the nationwide system. If a state is deemed to be not in compliance, HUD must implement in that particular state a licensing system that does meet the necessary requirements.

To date, all but three states—Nevada, Ohio and Minnesota—have committed to join the NMLS (see Figure 1). As of late April, 25 states and Puerto Rico are live on the system, and a total of 34 states should be up and running by the end of the year. The rest are expected to come on sometime next year.

Moreover, 25 states already have either passed or enacted a licensing process that meets the standards spelled out in Title V. Similar enabling legislation has been introduced in 28 other jurisdictions (see Figure 2).

Considering the slow legislative process, these numbers are indeed impressive—especially considering that NMLS began operations only 18 months ago, in early 2008. And HUD seems willing to let progress unfold at whatever pace is necessary.

"HUD has no interest" in taking over supervision of mortgage originators in any state, "although we certainly will if we have to," says William Matchneer, associate deputy assistant secretary of HUD's Office of Regulatory Affairs and Manufactured Housing.

"We are aware that there are a few states that have not committed to develop the necessary legislation, and are making plans to train, license and check the backgrounds of all mortgage originators in those states," he says.

A long time coming

As usual with efforts to create something of this magnitude, the campaign to create NMLS started more than a decade ago.

By all accounts, mortgage industry participants spearheaded the first attempt at building a nationwide system in 1996, when a New City, New York–based mortgage broker named Nagy Henein called a summit of wholesaler lenders and the leadership of the National Association of Mortgage Brokers (NAMB), McLean, Virginia. The wholesalers had expressed dismay about bad lending practices, and the NAMB was worried its members would lose a vital source of funding if lenders shut down or curtailed the wholesale distribution channel.

"I vividly remember it," says Henein, who now is president of the Greater Mortgage Corporation, New City, New York. "I lived, ate and breathed that thing for five and a half years. If we had gone with this back in 2001, I don't think we would be in the predicament we're in right now."

Out of that first meeting came the decision by the NAMB board to create its Best Business Practices Committee, which the New York broker chaired. Out of that panel came the decision to go beyond the normal code of ethics to which NAMB members subscribed, and create a Code of Best Business Practices to which members also would be held. And out of that code came the idea for a registry of loan originators.

The concept at that time was simple enough, Nagy recalls: Registrants would be given a unique identifying number they would carry with them from company to company and state to state, so that no matter where they went, those who were tagged as so-called bad actors could not move from one place to another to escape their transgressions.

The idea was to build a third-party registration process along the lines of the model built by the National Association of Securities Dealers (NASD), Washington, D.C., for stockbrokers in the early 1980s.

According to Heinen and others who attended a series of meetings back then, Fannie Mae and Freddie Mac thought enough of the concept to each pony up $100,000 to pay for the research and development necessary to further develop the plan.

As sound as the initiative was, though, it began to fall apart in the early part of 2001 when large players—nobody seems to remember exactly which ones—began to add up the cost of registering their loan officers and decided that they shouldn't have to join because their employees already worked under the aegis of federal regulators.

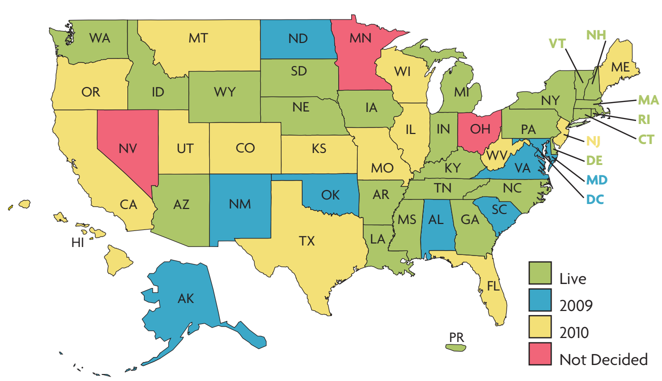
"They were of the opinion that the only ones who needed to register were mortgage brokers and small mortgage bankers," says Henein.

John Courson, then president of Central Pacific Mortgage Co., Folsom, California, and now president and chief executive officer of the Mortgage Bankers Association (MBA), went to several of those formative meetings. And though he doesn't remember exactly how it all unwound, he does recall "extensive discussions" on who would be required to take part in the registry.

States get involved

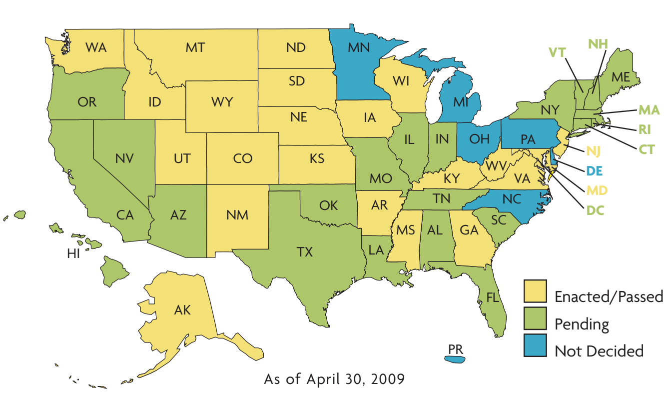
The effort was gaining some traction when, in 2003, Gavin Gee, director of the Idaho Department of Finance, Boise, Idaho, called on the CSBS to create a national registry modeled after the one created by the NASD (now the Financial Industry Regulatory Authority [FINRA]) that monitors customer complaints, settlements, arbitrations and actions taken by all securities regulators. That system, which also acts as a regulatory body with enforcement powers, had been in place since 1983, and is generally credited with keeping the securities business relatively clean.

Figure **1** **Nationwide Mortgage Licensing System and Registry (NMLS) State Participation**



SOURCE: STATE REGULATORY REGISTRY LLC

Figure **2** **Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) State Participation**



SOURCE: CONFERENCE OF STATE BANK SUPERVISORS

"It seemed like it was natural to create a similar database for the mortgage industry," Gee told *American Banker* newspaper several years ago. Such a database would make "licensing and tracking individuals for enforcement actions much easier," and it would help regulators "keep track of the fraudsters who jump states and move across the country," he said.

Enough of the Idaho regulator's colleagues agreed with him that CSBS put Gee in charge of a special task force to explore the concept. At the time, at least 24 state, county and local jurisdictions had enacted anti-predatory-lending legislation. And many state regulators believed that if they didn't take control of the situation, Uncle Sam would step in.

Initially, the Residential Mortgage Registry Task Force identified three goals: a uniform mortgage application, a Web-based platform for licensing and a coordinated examination procedure. The idea was to dramatically reduce the compliance burdens on mortgage originators by eliminating differing state license applications, while at the same time providing regulators with common data elements so all states could see nationwide or region-wide records of applicants.

The task force met monthly in 2004, and soon the effort became a joint initiative with AARMR. By the next year, the concept had been developed enough that industry representatives were brought in for their input. And soon thereafter, an exploratory agreement was signed with FINRA to develop the system. A more detailed contract was signed in 2006, and a limited-liability subsidiary, the State Regulatory Registry (SRR) was formed to own and operate the NMLS.

The system went through an 18-month incubation period in which regulators, lenders and technology companies laid the groundwork in developing a uniform application as well as a central repository for licensing and publically adjudicated enforcement actions. In January 2008, the system went live in seven states—Idaho, Iowa, Kentucky, Massachusetts, Nebraska, New York and Rhode Island.

By January 2009, with 22 states on board, Gee had pronounced the system a success. "NMLS has exceeded our initial expectations and is on solid footing as it enters its second year," he said on the system's first anniversary.

Today, NMLS is managing more than 96,000 licensees in 25 states and Puerto Rico, and SRR President Bill Matthews says it is "achieving exactly what its founders intended—namely to provide a world-class system for the regulation of the mortgage industry."

Even from the perspective of licensees, NMLS has succeeded in accomplishing the daunting task of maintaining licenses in every jurisdiction in which a lender wants to originate loans. Just ask Cherud Wilkerson, chief compliance officer at Lend America, Melville, New York. The firm is licensed to do business in 47 states (all but Mississippi, Nevada and Missouri), and employs 425 loans officers. And Wilkerson says the system "has been a godsend for us."

No longer voluntary

NMLS was always conceived as voluntary, but that all changed with the passage of the SAFE Act. The federal law directs the creation of a nationwide mortgage licensing and registry system "to be developed and maintained by CSBS and AARMR," according to the law.

Title V requires states to have a licensing and registration system in place by July 31, 2009. But the law also allows HUD to extend the deadline for up to 24 months in both cases if it determines that a state is making a good-faith effort to meet the minimum requirements of the law.

If HUD determines that a state is not in compliance, it is compelled to implement a system for all state-licensed originators within that state. Furthermore, the SAFE Act is not pre-emptive, so in addition to complying with the federal system, originators would also have to obtain licenses under the laws of the states in which they operate. Fortunately, the general consensus is that if a state fails to pass implementing legislation that is totally compliant with the SAFE Act, HUD will work with that state to get it where it needs to be.

"HUD has indicated to us that it's awfully glad we're all over this," says AARMR President David Bleicken, who is also deputy secretary for non-depository institutions and consumer services in Pennsylvania's Department of Banking, Harrisburg, Pennsylvania.

"If you ask HUD, they're glad we've done all this," agrees Joseph Smith, North Carolina Commissioner of Banks, based in Raleigh, North Carolina.

In January, James Lockhart, director of the Federal Housing Finance Agency (FHFA), announced that for mortgage applications taken beginning Jan. 1, 2010, Freddie Mac and Fannie Mae are required to obtain loan-level identifiers for the mortgage originator, the originator's company, the field appraiser and supervisory appraiser.

"This represents a major industry change," Lockhart said, noting that the government-sponsored enterprises' (GSEs') previous efforts to attach such tags to all loans had been thwarted by the absence of a national registration system. Now that such a system is in place, he said, the GSEs will be able to use such data to identify, measure, monitor and control risk associated with performance or the lack thereof.

"If originators or appraisers have contributed to the incidences of mortgage fraud," the FHFA director said, "these identifiers allow the enterprises to get to the root of the problem and address the issues."

Simple and straightforward

Despite federal involvement, the beauty of the NMLS lies in its relative simplicity, says Matthews, who early in his career was a regulator with the old Federal Home Loan Bank Board.

"We act as the back office for state regulators. If a person wants to obtain a license to originate mortgages, he completes a single online application form and tells the system in which states he wants to operate. The system does a 'completeness' check, collects the fees and submits the same application to each state. But the beauty of it all is that there is only one single record that follows the originator wherever he goes," says Matthews.

"We're just facilitating the gathering of the necessary information, the collection and disbursement of fees, and the submission of the application to the proper regulatory agency. The regulator makes the final decision—yea or nay—and then communicates that decision back to the system. The only way this sort of thing can work is if you have uniformity," he adds.

Originators used to have to fill out a separate form and follow a separate process for each and every state agency whose approval was needed to do business in a particular state. Now the process has been simplified to require just four uniform licensing forms that gather the necessary information about institutions as well as individuals.

Each licensed lender, banker and broker company is able to electronically complete a single form regardless of the number of states in which it is licensed. Similarly, each of their owners and executive officers are able to complete a single form regardless of the number of companies with which they are affiliated. And each mortgage company branch and each loan officer will fill out a single form for use in those states that require branch or loan officer licensing.

NMLS WAS ALWAYS CONCEIVED AS VOLUNTARY, BUT THAT ALL CHANGED WITH THE PASSAGE OF THE SAFE ACT.

All of the information that is collected is housed in a centralized database available to state regulators. In addition, licensees are able to access their own records over a secure Web site to change whatever information is necessary, to renew their current licenses or apply for new licenses in other jurisdictions. Less paperwork means less cost for everyone involved in the licensing and registration process.

As each form is completed and submitted to NMLS, the system assigns a unique identifying number to each applicant. That number is affixed permanently to either the entity or the applicant, as the case may be, thereby allowing regulators to track companies and people across states and over time.

Eventually consumers and various mortgage industry players will be allowed into the system to check on the license status and history of the companies and/or people with which they are considering doing business or perhaps even hiring, according to Matthews.

Under the SAFE Act, applicants are required to complete at least 20 hours of pre-licensing education, and the courses and their providers must be approved by NMLS. Licensees also are required to take at least eight hours of continuing education per licensing period, and pass a test administered by NMLS.

Moreover, no one convicted of a felony can hold a license for seven years following that conviction. But the ban could be permanent if the conviction is for a financially related crime. And if any state revokes a licencee's approval to do business within its borders, he or she is similarly blocked from working as a mortgage originator in another jurisdiction.

Using technology to achieve uniformity is actually a common theme among the initiatives state regulators have been focusing on over the past few years. Chuck Cross, vice president of mortgage regulatory policy at CSBS, was involved in drafting model state legislation for implementing the SAFE Act from its earliest stages. More recently, Cross, who came to CSBS from Washington, where he was director of the state's Department of Financial Institutions Consumer Services Division, has worked with AARMR to launch new uniform multi-state mortgage lending examination processes powered by technology developed by ComplianceEase.

"The NMLS and the new examinations were designed to create efficiencies for licensees as well as regulators," says Cross, a former AARMR president. "Each initiative aims to create a single process out of many, consolidating the work of multiple states while still enabling each state to control oversight of its own licensees."

So far, so good

If there's one thing licensees and regulators seem to agree on at this point, it's that the new licensing and registration system is making their lives easier and less expensive, even for lenders that operate in numerous jurisdictions. Believe it or not, making life easier is just what regulators intended.

It has been said that licensing and registration will be difficult and expensive, especially for mortgage lenders that operate in numerous jurisdictions. But as North Carolina Commissioner of Banks Smith says, just the opposite is true.

"We've been painted as radicals, but we cannot tolerate predatory lending," he told a gathering of lenders at MBA's National Secondary Market Conference in April. "We don't want to put you out of business. Rather, we want you to stay

Not Suited for Servicing

The Mortgage Bankers Association (MBA) and six other financial services organizations have called on Department of Housing and Urban Development (HUD) Secretary Shaun Donovan to exclude loss-mitigation specialists employed by loan servicers from coverage under the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act).

The SAFE Act, which is actually Title V of the Housing and Economic Recovery Act of 2008 (HERA), requires all mortgage originators to be either licensed or registered through the Nationwide Mortgage Licensing System and Registry (NMLS). But MBA and the other organizations maintain that the legislation "is not the appropriate vehicle to address any servicer-related concerns."

The groups, which include the American Bankers Association (ABA), Washington, D.C.; American Financial Services Association (AFSA), Washington, D.C.; Consumer Bankers Association (CBA), Arlington, Virginia; Consumer Mortgage Coalition, Washington, D.C.; Independent Community Bankers of America (ICBA), Washington, D.C.; and the Housing Policy Council of the Financial Services Roundtable, Washington, D.C., argue that making servicers and their employees subject to the SAFE Act requirements "would only serve to hinder and make much more costly" the work they do in trying to help the millions of borrowers who are experiencing difficulty making their payments.

In a separate letter to Donovan from the two groups that operate the NMLS—the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR), both based in Washington, D.C.—also expressed their concern that applying SAFE Act's licensing requirements to loss-mitigation specialists "might seriously curtail (their efforts) at a time of unprecedented numbers of mortgage delinquencies and defaults."

All these organizations have asked HUD for an interpretation of whether the law covers servicers. CSBS and AARMR suggested delaying coverage until at least July 31, 2011, or until a ruling is made. But the seven financial services associations want HUD to take a position as soon as possible. And they want HUD to hold that servicers are exempt from licensing requirements.

"I find it ironic that at a time of massive amounts of loan modifications, CSBS and AARMR believe it is in the best interest of everyone to exempt loss-mitigation people now but not later. I just don't follow the logic of that," says MBA President and Chief Executive Officer John Courson. "If it is good enough for them now, why won't it be good enough two years from now?"

Specifically, MBA and the other groups contend that the SAFE Act requirements were geared exclusively to lenders and brokers—not servicers. For example, while the law requires qualification tests that measure an applicant's knowledge of federal and state law pertaining to originations, there is no similar requirement for knowledge about servicing or servicing-related issues.

MBA AND THE OTHER GROUPS CONTEND THAT THE SAFE ACT REQUIREMENTS WERE GEARED EXCLUSIVELY TO LENDERS AND BROKERS—NOT SERVICERS.

Servicing is "a very labor-intensive operation, requiring large numbers of employees and agents," they also point out in their joint letter sent to HUD. Consequently, layering on additional licensing requirements "would frustrate and make more costly" servicers' efforts to save troubled borrowers.

CSBS and AARMR contend that since servicers modify old paper and create new loans, they act as originators. The regulators also point out that servicers are compensated for their work, albeit not in the traditional way of an originator.

But the trade groups maintain that servicers were never intended to be covered under the law. A servicer does not take loan applications, which is part of the law's definition of "loan originator," they argue. Nor does a servicer negotiate terms for compensation or gain, which is another aspect that defines originator. Servicers negotiate terms, the trade groups admit, but only on the *existing* loans they administer in an effort to save financially strapped borrowers from foreclosure.

"Servicing is just different," says Courson. "Modifications are a very different process."

in business. We're learning a lot by working together to police the marketplace."

NMLS "is clearly making our processes more efficient," says Lend America's Wilkerson, who has two individuals on staff who do nothing but handle licensing and renewals. "Now, we're able to control licensing at the point of hire. When someone comes on board here, we hand them the NMLS form and they fill it out. Then, when we data-input the information, we simply check off the states where it is to be sent. It's like one-stop shopping."

In the event a loan officer is terminated, the system also makes it easy to remove that person from the company's rolls with state regulators. And that's especially important if the person is removed for cause, says Wilkerson. "Should that person try to move to another company, [which] used to happen pretty frequently, the regulator will be able to see that at a glance."

Lend America and numerous other industry participants have found the new process to be more efficient. Most important to the success of any new system, however, is that it needs to be relatively easy to learn. And for Wilkerson and Lend America, at least, NMLS appears to have passed that test with flying colors. "We became fluent with it pretty quickly. It's largely self-explanatory, and it's certainly a lot easier than filling out different applications for every state."

NMLS "IS CLEARLY MAKING OUR PROCESSES MORE EFFICIENT," SAYS LEND AMERICA'S WILKERSON.

If the coming months show that the rest of the industry has a similar experience with NMLS, then its mission to bring licensing and registration requirements across the country into one place can truly be called a success. **MB**

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