



Proposal: Mortgage Business-Specific Requirements



Mortgage Business-Specific Requirements:
A Component of NMLS
Modernization

Comment Period: March 16–May 15, 2023



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Public Comment Request

Mortgage Business-Specific Requirements Proposal

On behalf of the NMLS Policy Committee¹, the Conference of State Bank Supervisors² (CSBS) invites public comments and feedback on the Mortgage Business-Specific Requirements Proposal.

Goals

CSBS is working to modernize NMLS. In connection with efforts to modernize NMLS, the Licensing Requirements Framework³ has been established. The Framework divides licensing requirements into three categories; Core Requirements, Business-Specific Requirements, and License-Specific Requirements.

The NMLS Policy Committee has developed the Mortgage Business-Specific Requirements Proposal to support the goals of Networked Supervision by creating a national standard that allows the state system to operate as a whole.

For more information on the Licensing Requirements Framework, see [Appendix 1](#).

Public Comment Process

This proposal should be read in conjunction with the NMLS Core Requirements as detailed in the Licensing Requirements Framework (see footnote 3 below).

Each company should submit one response that represents its comments, feedback, and views on the proposal. Submissions must include the submitter's contact information. Comments received, as well as the submitter's name and company name, will be posted on the NMLS Resource Center. The NMLS Policy Committee will review and evaluate any recommended changes or additions to the proposal.

Comments should be emailed to comments@csbs.org.

Comment submission deadline: May 15, 2023

The NMLS Policy Committee is particularly interested in receiving input on the following questions.

¹ Information about the NMLS Policy Committee can be found [here](#).

² Information about CSBS and NMLS can be found [here](#).

³ More information about the Licensing Requirements Framework can be found [here](#).

Business Activities included in the Mortgage Business-Specific Requirements

- The Mortgage Business-Specific Requirements proposes that all companies engaging in mortgage lending and servicing business activities (e.g., first mortgage brokering, first mortgage lending, and first mortgage servicing) with the exception of appraisal management services will be required to complete the Mortgage Business-Specific Requirements. See [Appendix 2](#) for the full list. Do you agree that all companies engaging in mortgage lending and servicing business activities should be required to complete the Mortgage Business-Specific Requirements?

Contacts

- Do you agree that all contacts listed should be required for companies completing the Mortgage Business-Specific Requirements?
- Are there other contacts that are relevant to mortgage activities and should be required?
- Is it helpful to be able to list a third-party as a contact responsible for the contact types listed in the proposal?
- When listing a third-party contact, a company will be deemed to have expressly authorized a state agency to contact the third-party without further approval from the company. Does this raise any concerns?

Periodic Reporting

- Do you have any suggested modifications to the proposed definitions for Reportable Incident, Catastrophic Event, and Cybersecurity Incident?
- Do you have any additional comments on this proposed new reporting requirement?

Documents

- Are there any other documents commonly required for companies engaging in mortgage lending and servicing business activities not included in the Mortgage Business-Specific Requirements?
- Financial Statements
 - The proposal envisions that start-up companies will be able to submit something less than audited financials (i.e., compiled, reviewed or unaudited). Do you agree with the definition of a start-up company included [here](#)?
 - Do you agree there should be an exception to the audited financial statement requirement for start-up companies?
 - If so, what type of financials should start-up companies submit (i.e., compiled, reviewed or unaudited)?
 - The proposal states a company obtaining a license that only permits brokering activities and that is not a start-up may provide something less than audited financials. Do you agree with this exception?

- If so, what type of financials should these companies submit (i.e., compiled, reviewed or unaudited)?
- The proposal states a company solely engaged in third-party mortgage loan processing or underwriting and that is not a start-up, may provide something less than audited financials. Do you agree with this exception?
 - If so, what type of financials should these companies submit (i.e., compiled, reviewed or unaudited)?
- Document Requirements
 - Are there any policies not listed in the Document Requirements section that should be included?
 - Are you in favor of the proposed policy certification process?
- Document Samples
 - Are there any document samples not listed in the Document Requirements section that should be included?

Location Reporting

- Are there any locations not in the location list that should be added for the mortgage industry?
- Are the location definitions sufficient?
 - If not, please include suggested edits.
- Is the required information for Company Operated Work Locations adequate?

Key Individual Requirements

- Do you support the minimum requirements proposed for the third-party investigatory background checks to be provided when a key individual⁴ has resided outside the United States at any time in the last 10 years?

⁴ The term key individual is derived from the Key Individual Wizard Initiative (KIWI). A primary objective of KIWI is to move beyond the traditional definition of control person. Instead, the KIWI identifies persons serving in specific areas of functional responsibility and those that are responsible for minimizing risks associated with the applicant's business activities. Another objective of KIWI is to identify those individuals who may have undue influence based upon percent of ownership.

As a practical matter the terms "control individual" and "key individual" are synonymous.



Mortgage Business-Specific Requirements Proposal

To develop the Mortgage Business-Specific Requirements Proposal, business activities and all Mortgage State Licensing Requirements Checklists were analyzed by license type (i.e., lender, broker, and servicer). Very few differences were found, therefore the business-specific requirements presented are applicable to all mortgage license types, except for the financial statement requirements as denoted.

The proposal consists of eight major components:

1. Contacts
2. Periodic Reporting
3. Data Requirements
4. Document Requirements
5. Required Functionality
6. Location Reporting
7. Company Operated Work Locations' Information
8. Key Individual Requirements

Contacts

As a result of regulator comment on the proposal, in addition to a primary company contact and a primary consumer complaint contact, an accounting, legal, and licensing contact will be added to Core Requirements which are required to be completed by all companies obtaining and managing a license through NMLS. All mortgage licensees will also be required to provide the name of an individual and their contact information, including their address, for the following areas of responsibility:

Area of Responsibility
Consumer Complaint - Regulator ⁵
Data Breach or Cybersecurity Incident Contact if not identified as a key individual
Exam Billing
Exam Delivery
Mortgage Call Report

While a company may list a third-party contact, the company will be required to also identify a contact within the company for the specific area of responsibility. By listing a third-party contact, the company will be deemed to have expressly authorized a state agency to contact the third-party without further approval from the company. While the company may list a third party, the company is ultimately responsible for the area of responsibility.

⁵ This would be the individual at the company that would be contacted should an agency, be it state or federal, inquire about a consumer complaint.



Periodic Reporting

All mortgage licensees will be required to complete the following periodic reports:

Periodic Reports	
Report	Frequency
Mortgage Call Report ⁶	Quarterly
Audited Financial Statements	Annually
Reportable Incidents	Ongoing

A Reportable Incident would be defined as:

An incident or situation, that would present a material risk, financial or otherwise, to a company's operations or to the customers it serves. In addition to a data breach that must be reported under state or federal law, examples of items which may be material include, but are not limited to:

1. *A Cybersecurity Incident*
2. *Termination of a line of credit or funding source*
3. *Catastrophic Event*
4. *As a result of notification from a third-party service provider, knowledge that the provider will modify or cancel an arrangement which would affect the company's ability to conduct its business (i.e., there is no back-up vendor in place or business continuity plan)*

Reportable Incidents must be reported without unreasonable delay, but no later than five business days from a determination that an incident or situation has occurred.

Related Definitions:

- **Catastrophic Event:** An unforeseen event, such as a data center destruction or an electrical grid failure, which results in extraordinary levels of damage or disruption to your business.
- **Cybersecurity Incident:** Any intentional or unintentional compromise of the confidentiality, integrity, or availability of a service, system, or data which has a negative actual or potential impact on the organization or its clientele.

⁶ The Mortgage Call Report is a report of nationwide and state-level mortgage activity, including company level information related to lines of credit and nationwide servicing information.



Data Requirements

The following information includes requirements from the [Company Form](#), [Branch Form](#), and [Individual Form](#) currently used in NMLS, unless otherwise noted. All mortgage companies using NMLS will be required to complete the requirements and data points listed below.

Requirement	Description
Approvals and Designations	Provide numbers for any approvals or designations the company holds
Bank Account Information	Account(s) used for your mortgage activities, including operating, trust (e.g., client funds and escrow accounts) and line or letter of credit accounts in the Bank Account section of the Company Form (MU1). The account(s) must be business accounts in the name of the applicant.

Document Requirements

Required Document	Description
Financial Statements	A start-up company is a company that began conducting business less than two years prior to obtaining its first license, is not publicly traded, and has gross revenue of less than \$500,000. If more than two years has passed since the company began conducting business prior to obtaining its first license, is publicly traded, or has annual gross revenue of \$500,000 or more, the company must upload audited financials for the most recent fiscal year. A company that is obtaining a license that only permits brokering activities or a company that is solely engaged in third-party mortgage loan processing or underwriting, may provide something less than audited financials. If the company is not required to upload audited financials (i.e., they are a start-up company), but the same are available they should provide them. If the company is not required to provide audited financials, upload all financials requested in the unaudited financials box. Audited financials • Audited financials must be submitted for most recent fiscal year, or • If publicly traded, submit most recent copy of Form 10K • Note: If the fiscal year ended 120 or more days prior to the date of application, interim financials must be submitted and must be dated within 90 days of application Unaudited financials • Financial statement as of the most recent quarter end (at a minimum, balance sheet and income statement), certified to be true and accurate

Required Document	Description
Policies and Certifications	Agencies run the gamut from not asking about policies an applicant has in place to asking for a complete copy of the policy. Accordingly, this proposal recommends the following: 1. For each of the policies listed below, the applicant will have to provide a certification as to the key provisions of the policy. The certification forms to be developed will contain a list of items for which the applicant will indicate yes or no as to whether the items are addressed/included in the policy. 2. Applicant will have to attach a complete copy of the policy. It will be explicitly stated on each policy certification form that approval or granting of a license does not mean that the policy contents have been approved. To account for smaller companies that may have documentation, but not in the form of a Policy per se for the required items, submission of documentation evidencing compliance will be adequate.
BSA/AML Policy	Upload current Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Policy, the required certification, and the most recent independent review, if any. The BSA/AML Policy must have a company risk assessment included or as a stand-alone document. The risk assessment should evaluate all risk areas of the company, including areas such as products, services, customers, entities, volume, and geographic locations. While the provisions of the Bank Secrecy Act do not require a risk assessment in writing, to ensure an adequate anti-money laundering program is in place to prevent money laundering and/or terrorist financing the risks associated with a company must be evaluated. Submission of this policy must include, the company's OFAC Policy, PATRIOT Act Policy, and Relevant and Ongoing Training of Employees Policy.
Gramm-Leach Bliley Privacy Act Policy	Upload current Gramm-Leach Bliley Privacy Policy and the required certification. The policy must include, at a minimum, detail on how the company protects nonpublic personal information, the company's security plans and the company's annual privacy notice requirements.

Disaster Recovery/ Business Continuity Plan	Upload current disaster recovery or business continuity plan and the required certification. The plan must include detail on how the company responds to unplanned incidents such as natural disasters and provides detail on how the company will ensure critical business functions can be recovered and how essential aspects of the company will remain functional.
Consumer Grievance/ Complaint Policy	Upload current Consumer Grievance/Complaint Policy and the required certification. The policy must include detail on how complaints can be filed and how the same are processed by the company.
Document Samples	Upload copies of documents used in the regular course of business, including but not limited to: • Operating agreement (including all amendments) • Consumer complaint notice – Consumer complaint notice that complies with the requirements • Customer agreements – disclosure and agreements • Third-party contracts – Sample contracts for consultants, solicitors, and third-party providers

Required Functionality

Requirement	Description
Electronic Surety Bond	A three-party agreement whereby one party (the surety) is bound with the entity bonded (the principal) to a third-party (the obligee). The bond guarantees the surety's performance or monetary compensation to the obligee should there be a failure by the principal to perform specified acts within a stated time period. In the context of electronic surety bond tracking, the surety bond is electronically managed in NMLS.



Location Reporting⁷

As part of Core Requirements, all companies will be required to provide those locations where licensed activity will be performed, records are stored, or where support staff for licensed activities are located. As a result of regulator comment on the Proposal, the below locations will also be required as part of Core Requirements.

- **Accounting:** The applicant/licensee will provide the primary location for accounting services that are provided to the company, regardless of whether they are provided in house or by a third-party accounting firm. This should include internal and third-party accounting services.
- **Cloud Services:** In connection with the books and records requirement, the applicant/licensee will be asked to provide details regarding cloud storage services, including services used for data collected from customers.
- **Legal:** The applicant/licensee will provide the primary location for legal services that are provided to the company, regardless of whether they are provided in house or by a third-party law firm.

Company Operated Work Locations' Information

The below details what information will be needed for each company operated work location.

Requirement	Format/ Description
Business Activities	Selected from business activities reported by the company.
Operating Under which License Authority?	Selected from license authority held or applied for by the company.
Physical Address	Street address where the company operated location is physically located.
Mailing Address	Mailing address for the company operated location, if different from physical address.
Books and Records Information	Selected from books and records locations reported by the company or provide a new record custodian for this location.
Doing Business As (DBA)	Selected from names of DBA(s) reported by the company under which the Company owned location commonly operates. <i>This field is optional.</i>

⁷ While this information is presented as part of the Mortgage Business-Specific Requirements, it is anticipated that these locations will need to be reported for all industries.



Branch Manager Name	Name of the individual responsible for licensed activity at the company operated location.
Phone Number	Primary phone number for the company operated location.
Email Address	Primary email for the company owned location. <i>This field is optional.</i>
Start Date	Date that represents the starting date that licensed activity began at the physical address.
End Date	Date that represents the ending date that licensed activity was no longer performed at the physical address. <i>This field is only required if the location is no longer in operations.</i>

Key Individual Requirements⁸

Key individuals will be identified in the modernized NMLS through a series of questions. The applicant will identify key individuals in the areas of management, ownership, functional risk areas, and industry specific roles, such as key individuals associated with BSA/AML compliance.

Every applicant will be asked to identify the highest-ranking executive within the entity. The applicant will also be asked to provide management information, including how the applicant is managed. [Appendix 3](#) provides details on who is defined as a key individual based on applicant entity type. One hundred percent (100%) ownership for both direct and indirect owners shall be accounted for. All owners with a 10% or more interest in an applicant are required to be disclosed. Like today, individuals that own less than 10% need not be disclosed. Instead, individuals or entities that own less than 10% are accounted for in the minority interest entry. The applicant will total up the percentage of ownership interests held by individuals or entities, neither of whom own 10% or more and enter the percentage. The Wizard will also ask how many owners are in the minority interest entry and do a reasonability test.

Rather than titles, the key individual inquiry focuses on risk and functional areas. Four functional areas have been identified as being of greatest risk within an organization: operations, finance, compliance, and information security. For each functional area, the applicant will be asked who is responsible for establishing, maintaining, and approving policies and procedures for the functional area and who is responsible for ensuring compliance with the policies. For the finance area the applicant will be asked who certifies to the accuracy of the financial information of the Company.

In addition to providing information that is collected on what is known as the MU Form today, key individuals for mortgage must complete the following requirements as part of the Mortgage Business-Specific Requirements:

⁸ Detail on key individuals can be found in the Core Requirements proposal noted in footnote 4 herein.



Requirement	Description
Credit Reports	Key Individuals identified will be required to submit credit reports.
FBI Criminal Background Check (CBC)Authorization	Key Individuals identified will be required to complete a CBC.

If a key individual has resided outside the U.S. at any time in the last 10 years, they must also provide an investigative background report which is defined below.

Requirement	Description
Third-Party Investigatory Background Checks	If the individual has resided outside the United States at any time in the last 10 years, the Individual shall also provide an investigative background report prepared by an independent search firm that meets the following requirements: (A) At a minimum, the search firm shall: 1. Demonstrate that it has sufficient knowledge, resources, and employs accepted methodologies to conduct the research of the background report; and 2. Not be affiliated with or have an interest with any individuals it is researching. (B) At a minimum, the investigative background report shall be written in the English language and shall contain the following: 1. If available in the individual's current jurisdiction of residency, a comprehensive credit report, or any equivalent information obtained or generated by the independent search firm to accomplish such report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the Individual resided and worked; 2. Criminal records information for the past 10 years, including, but not limited to, felonies, misdemeanors, and violations in the countries, provinces, states, cities, towns, and contiguous areas where the Individual resided and worked; 3. Employment history; 4. Media history, including an electronic search of national and local publications, wire services, and business applications; and 5. Regulatory history, including but not limited to, securities, banking, insurance, and mortgage-related industries.



Appendices

Appendix 1 – Licensing Requirements Framework

The Licensing Requirements Framework (Framework)⁹ has been established in connection with the modernized NMLS. The Framework divides licensing requirements into three categories; Core Requirements, Business-Specific Requirements and License-Specific Requirements.

Business-Specific Requirements supplement Core Requirements, which are generally demographic, and required of all nonbank entities licensed through NMLS, regardless of industry. Core Requirements are not configurable by state agencies and are universal to all nonbank financial service companies. In the modernized NMLS, licensed companies, individuals and branches will be required to complete Business-Specific Requirements as part of their license applications. Business-Specific Requirements are items generally required for licensing of specified business activities. All entities obtaining a license in that business must complete these requirements. Business-Specific Requirements are universal to all entities offering services or products in that business. All entities obtaining a license in that business through NMLS must complete these requirements.

In addition to Core Requirements and Business-Specific Requirements, entities will be required to complete License-Specific Requirements during the license application process. License-Specific Requirements are information required by a state agency for their license type. All entities obtaining the state's license through NMLS must complete these requirements. License-Specific Requirements are configured by state agencies and must be unique and not duplicative of other requirements in the system, including those found in Core and Business-Specific Requirements. License-Specific Requirements should be minimized as much as possible.

⁹ Information about the Licensing Requirement Framework can be found [here](#).

Appendix 2 - Business Activities

Mortgage Lending

Business Activity	Definition
First mortgage brokering	Providing the service of bringing borrowers and lenders together and assisting in negotiating a mortgage loan that gives the mortgagee a security right over all other mortgages of the mortgaged property.
First mortgage lending	Acting as a lender or creditor by offering to provide funds to a borrower for a mortgage loan that gives the mortgagee a security right over all other mortgages of the mortgaged property.
Foreclosure consulting/foreclosure rescue	Directly or indirectly making a solicitation, representation or offer to a homeowner to perform, for or with the intent to receive compensation from or on behalf of the homeowner, a service that the solicitation, representation or offer indicates will accomplish one or more of the following: a) Prevent, postpone or stop a foreclosure sale. b) Obtain forbearance from a beneficiary or mortgagee. c) Assist the homeowner in exercising a right of redemption. d) Obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation. e) Obtain the waiver of an acceleration clause that is: A. Contained in a promissory note or contract; and a. Secured by or contained in a deed of trust for, or mortgage on, a residence in foreclosure or in default. f) Assist the homeowner in obtaining a loan or advance of funds. Avoid or ameliorate an impairment of the homeowner's credit resulting from a recorded notice of foreclosure or default.
High-cost home loans – Broker	Acting as a broker on a loan which meets the definition of a high-cost home loan under state or federal law.
High-cost home loans – Lender	Acting as a lender on a loan which meets the definition of a high-cost home loan under state or federal law.
Home equity lending/lines of credit – Broker	Acting as a broker for an open-end loan, usually recorded as a second mortgage, that permits borrowers to obtain cash advances on an approved line of credit.

Business Activity	Definition
Home equity lending/lines of credit – Lender	Acting as a lender for an open-end loan, usually recorded as a second mortgage, that permits borrowers to obtain cash advances on an approved line of credit.
Manufactured housing financing – Broker	Acting as a broker in financing of a dwelling unit that is constructed off-site before moving to the set location where the property would reside.
Manufactured housing financing – Lender	Acting as a lender in financing of a dwelling unit that is constructed off-site before moving to the set location where the property would reside.
Mortgage loan purchasing	Purchasing closed mortgages (that are not currently in default) with the intent to service or resell to others.
Reverse mortgage brokering	Acting as a broker for a loan secured by a lien on residential real estate in which the homeowner is not required to make payments on the loan until a specific event occurs (e.g., homeowner ceases to reside in the property).
Reverse mortgage lending	Acting as a lender for a loan secured by a lien on residential real estate in which the homeowner is not required to make payments on the loan until a specific event occurs (e.g., homeowner ceases to reside in the property).
Second mortgage brokering	Providing the service of bringing borrowers and lenders together and assist in negotiating a mortgage loan that has subordinate rights to a first mortgage.
Second mortgage lending	Acting as a lender or creditor by offering to provide funds to a borrower for a mortgage loan that has subordinate rights to a first mortgage.
Short sale	Making or facilitating a sale of residential property for an amount that is less than the remaining amount due on the loan that the residential property secures.
Third-party mortgage loan processing	Completing the mortgage loan application and supporting documentation for underwriting for an application your company did not take from the borrower.
Third-party mortgage loan underwriting	Underwriting a mortgage loan application and supporting documentation for an application your company did not take from the borrower nor are funding.

Mortgage Servicing

Business Activity	Definition
First mortgage servicing	Providing services which include the receipt of payments, customer service, escrow administration, investor accounting, collections or foreclosures for first mortgages the company holds/owns.
Master servicing	Directly or indirectly holding the rights to service mortgage loans, but not actually conducting the servicing activities associated with the loans.
Reverse mortgage servicing	Acting as a servicer for a loan secured by a lien on real estate in which the homeowner is not required to make payments on the loan until a specific event occurs (e.g., homeowner ceases to reside in the property).
Subordinate lien mortgage servicing	Providing services which include the receipt of payments, customer service, escrow administration, investor accounting, collections or foreclosures for subordinate lien mortgages the company holds/owns.
Third-party first mortgage servicing	Providing services which include the receipt of payments, customer service, escrow administration, investor accounting, collections or foreclosures for first mortgages the company does not hold/own.
Third-party subordinate lien mortgage servicing	Providing services which include the receipt of payments, customer service, escrow administration, investor accounting, collections or foreclosures for subordinate lien mortgage the company does not hold/own.



Appendix 3 – Key Individual Information

For the below applicant entity types, a Key Individual is defined as:

Applicant Entity Type	Key Individual
Corporation	- Chairman of the Board - Board members, excluding those that are advisory
General Partnership	All general partners, unless there are managing general partners, in which case, managing general partners
Housing Authority – Local Non-Profit	- Chairman of the Board - Board members, excluding those that are advisory
Housing Authority – State Chartered Non-Profit	No one is vetted
Limited Partnership	All general partners, unless there are managing general partners, in which case, managing general partners
Limited Liability Company – Manager Managed	All managers
Limited Liability Company – Member Managed	All members with a 10% or more interest in the applicant, unless they are passive investors
Limited Liability Partnership	All partners with a 10% or more interest in the applicant, unless they are passive investors
Non-Profit Corporation	- Chairman of the Board - Board members, excluding those that are advisory
Trust	- Trustee - If the trust is revocable, the grantor