

## INTERPRETATIVE OPINION NO. 5

### USE OF UNIQUE IDENTIFIER

The Nebraska Department of Banking and Finance (“Department”) hereby issues this Interpretive Opinion regarding the use of the unique identifiers in advertisements and solicitations.

Neb. Rev. Stat. § 45-702(30) defines the term “unique identifier” as a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry (“NMLS”).

The NMLS has established protocols to assign a unique identifier to each company, branch, and individual for whom an account has been established on the NMLS. The NMLS unique identifier is in numeric form. Each company, branch, and individual receives a unique number.

Congress enumerated several objectives for NMLS in Section 1502 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (“SAFE Act”). One objective was for the NMLS to “Provide consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.” 12 USC § 5101.

To meet the Congressional objective, the NMLS has established a website where consumers can research the background of their mortgage lending company (“mortgage banker”) and mortgage loan originator at <http://www.nmlsconsumeraccess.com> (“NMLS Consumer Access”). NMLS Consumer Access contains information about each mortgage banker and mortgage loan originator including licensing history and employment history. In addition to information about state licensed entities and individuals, NMLS Consumer Access also contains the same information as it pertains to mortgage loan originators who work for depository institutions who are registered pursuant to Section 1507 of the SAFE Act.

Neb. Rev. Stat. § 45-736 provides “The unique identifier of any individual originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule, regulation, or order of the director.”

The purpose of Section 45-736 is to insure that mortgage loan originators are providing their unique identifier to potential customers so that those customers can research the mortgage loan originator’s background before doing business with such individual. The unique identifier is an important tool for consumers as they use NMLS Consumer Access. Since each entity, branch, and individual has a unique identifier, a consumer can use the unique identifier to confirm that they are reviewing the correct person or entity’s record. Requiring loan originators

to provide potential borrowers with the unique identifier therefore enhances one of Congress' objectives in enacting the SAFE Act.

Questions have arisen concerning the type of advertising or solicitation which must contain the unique identifier and the manner of displaying the unique identifier. In response to these questions, the Department interprets Section 45-736 to include the following requirements pertaining to solicitations or advertisements:

1. A website established by a mortgage loan originator and used to solicit residential mortgage loan applications must disclose the mortgage loan originator's unique identifier.<sup>1</sup>
2. A website established by a mortgage banker which contains a list of employees or that otherwise identifies one or more mortgage loan originators (for example, a welcome message from the President of the company who is licensed as a mortgage loan originator, or an invitation for the reader to contact one or more loan originators for further information) must contain the unique identifier for each mortgage loan originator identified.
3. Business cards and stationary which identifies one or more mortgage loan originators must contain the unique identifier of each mortgage loan originator identified.
4. Mail or email solicitations which identify one or more mortgage loan originators must contain the unique identifier of each mortgage loan originator identified.
5. Print, audio, and video advertisements which identify one or more mortgage loan originators must also contain the unique identifier of each mortgage loan originator identified.
6. An outbound, pre-recorded telephone solicitation which identifies one or more mortgage loan originators must also contain the unique identifier of each mortgage loan originator identified.
7. Internet postings including, but not limited to, bulletin boards such as Craigslist, which solicit residential mortgage loan applications and identify one or more mortgage loan originators must also contain each mortgage loan originator's unique identifier.

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<sup>1</sup> A mortgage loan originator does not need to disclose his or her unique identifier in connection with a website that is not used for the purpose of soliciting residential mortgage loan applications. For example, a mortgage loan originator would not need to disclose his or her unique identifier on a social networking website such as Facebook unless it was being used to solicit residential mortgage loan applications.

8. Promotional items, including, but not limited to, pens, rulers, calendars, refrigerator magnets, etc., which identify one or more mortgage loan originators must also identify the unique identifier of each mortgage loan originator identified.

By contrast advertising or solicitations which do not identify individual mortgage loan originators do not need to contain the unique identifiers of the individual mortgage loan originators who originate loans on behalf of the mortgage banker. Section 45-736 does not require a mortgage banker to list its mortgage loan originators in any advertising or solicitation that it may conduct, nor does it require the mortgage banker to include a list of mortgage loan originators on its website. However, once the mortgage banker identifies one or more specific mortgage loan originators, it must also identify the unique identifiers for such individuals.

The Department would further interpret Section 45-736 to require the following as it pertains to the disclosure of the unique identifiers:

1. The unique identifier must appear in legible type, or in the case of an audio solicitations such as a radio advertisement, the disclosure must be audible.
2. The unique identifier must be identified on all advertising and solicitations including those advertisements and solicitations which are not directly soliciting consumers. For example, a marketing piece directed to real estate agents which identifies one or more mortgage loan originators must contain the unique identifier of each mortgage loan originator identified.
3. The unique identifier must be immediately preceded by “Nationwide Mortgage Licensing System Number,” “NMLS #” or other similar derivative.
4. The unique identifier must appear immediately after or immediately below the mortgage loan originator’s name so that the consumer will be readily able to associate the unique identifier with the correct mortgage loan originator.

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