

ESCROW ADVISORY COMMITTEE MEETING

September 10, 2024

9:00 AM – 12:00 PM

300 S. Spring St., 15th floor conference room, Los Angeles, CA 90013

Or via. Microsoft Teams

Department of Financial Protection and Innovation Represented by:

Greg Young, Senior Deputy Commissioner
Sheila Oliver, Deputy Commissioner
Joyce Tsai, Assistant Chief Counsel
Paul Liang, Assistant Deputy Commissioner
Gary Suzuki, Special Administrator – Regulatory
Alberto Saucedo, Special Administrator - Regulatory
Geraldine Young, MLO Special Administrator

Committee Members:

Barry Sender, Granite Escrow & Settlement Services / Other Business Ownership
Heidi Cassel, Solaris Escrow, Inc. / Medium Sized Escrow Company
Jason Watrous, Freedom Escrow /Chairperson EAFC**
Juliana Tu, Viva Escrow! Inc. / Business Specialization
Matthew Davis, Esq., Davis & Davis Law Group, APC
Nancy Silberberg, Altus Escrow, Inc./Past Chairperson EIC*
Patricia J. (P.J.) Garcia, Beach Pacific Escrow, Inc./Chairperson EIC *

* Escrow Institute of California

** Escrow Agents' Fidelity Corporation

1. Welcome and Opening Remarks

Paul Liang welcomed advisory committee members attending the meeting either in person or virtually. Liang conducted a roll call, confirming that a quorum was present, allowing the meeting to proceed.

Liang introduced Alberto Saucedo as the newest member of the Escrow Law management team. Saucedo has 13 years of experience with the DFPI in mortgage and securities regulation examinations. He holds certifications as a Certified Fraud Examiner and a Certified Senior Mortgage Examiner.

Liang introduced Geraldine Young, Special Administrator of the Mortgage Loan Originator Law program. Young will present to the advisory committee on her program's experience with using the NMLS system.

Liang also introduced Joyce Tsai, Assistant Chief Counsel of DFPI legal division. Liang provided an update that the DFPI Legal Division is currently reviewing the Ad Hoc Committee's recommendations for the audit procedure, with the review process ongoing.

2. Review and Approval of Minutes for 7/29/24 meeting

The advisory members received the minutes of the previous meeting in advance. Matthew Davis noted that some discussions were not fully captured in the minutes. In response, Liang requested that Davis share his notes on the missing details for review and incorporation into the minutes as appropriate. Barry Sender made a motion to approve the minutes. Heidi Cassel seconded the motion. The minutes were approved.

3. NMLS

Young shared her extensive experience with NMLS, emphasizing its importance as the central licensing and record-keeping system for mortgage loan originators and companies. Created under the SAFE Act in 2008, NMLS stores key data for licensees and regulators. It also provides limited public access, allowing users to check a company's licensing status.

Young highlighted inefficiencies with traditional processes, including slow mail submissions, confusion from multiple letters, and difficulties tracking applications. Licensees often called for updates, and it was challenging to confirm whether amendments were approved. These issues led to delays and miscommunication. She explained how NMLS addresses these problems. Applications and updates are submitted in real time with a 24-hour delay for state agency processing. Changes in NMLS help the state agency assign tasks and manage workloads. Licensees must still notify the state agency of updates to ensure proper tracking.

The NMLS checklist feature was noted as a key tool for streamlining processes. It provides clear steps for applications, amendments, and other submissions, reducing errors and confusion. Personnel changes, which were previously cumbersome, can now be managed online with a transparent record for licensees and regulators.

Young discussed document uploads in NMLS, such as financial statements and Statement of Identification and Questionnaires, which create accessible records while remaining private from the public view. Annual reports can be uploaded to NMLS, though they are often submitted through a separate portal. When asked about security, Young confirmed that documents uploaded to NMLS are encrypted. Regulatory agencies can access the files but cannot alter information like addresses or applications. She highlighted the advanced change notice feature, which allows companies to notify the state agency of updates like address changes 30 days in advance, helping streamline processes.

Young also discussed deficiency notices, explaining that NMLS triggers automatic emails for posted, amended, or cleared deficiencies, reducing the need for letters and phone calls. The system also tracks historical submissions, enhancing transparency.

Davis opened the discussion by asking whether the department has a list of subjects it plans to include in a new document depository system. He questioned if it would cover all aspects of licensure, including address and employment changes. He pointed out that if a licensee submits an address change, they must wait for an approved order before the change is

processed, even if the document is uploaded. He inquired about the internal processes for delivering documents back to licensees.

Liang responded, explaining that while the department is still working on a fully electronic system, licenses are currently still sent via email, not paper mail. Young confirmed that employment changes and other records are stored in the system, effectively making it a document depository. She highlighted the ease of managing employment changes, such as moving branch managers between locations, and the visibility of employment records across companies. Employers can check the employment history of potential hires by accessing these records, including titles held at previous companies.

Davis asked whether employee names would be publicly visible. Young clarified that employee names would not automatically be visible; they would need to be looked up individually. She compared the system to CRMLA, where employees who do not hold a license are still listed in the system as part of the company's records, but without a license themselves. The system stores limited information, especially for those who do not hold a license, making it easier to vet employees.

Silberberg raised concerns about loan officers and the visibility of their licenses in the system. Young affirmed that the system provides an advantage by tracking whether individuals have worked at companies linked to regulatory issues, allowing the department to detect potential problems more effectively. The system ensures a thorough vetting process for all employees.

Advisory members discussed public vs. private access to certain information on the NMLS system. Young explained that only enforcement actions, like license denials or revocations, are made publicly available. These actions are visible on the public side of the system. However, responses to disclosure questions, such as "yes" answers, are not publicized, as the focus is on the action taken rather than the specific details of the disclosures. She emphasized the importance of respecting private information when handling this data.

Davis then raised a question about whether the new employment documentation system would affect the department's procedures for verifying managers' employment. He pointed out that verification of employment (VOE) is often a source of delays in manager approvals and asked if the new system would address this issue.

Liang responded that some modifications would be necessary to streamline the process. Young added that an advance change notice could be filed for address or manager changes, helping to speed up the approval process. She also suggested that with the new system, it would be easier to verify employment by accessing contact information for previous employers and obtaining electronic verification much faster.

Davis expressed concern about delays caused by missed or unresponsive verification requests. Young acknowledged these challenges but believed that the new system, which stores employer contact information, would reduce these delays.

Cassel then asked about security and whether it would be possible to access information for companies other than the one a user is associated with. Young reassured that the system would limit access to the user's assigned company, with only public information accessible for other companies. Access would be granted based on company roles and permissions.

Liang acknowledged that transitioning to the new system would involve challenges and could take a year for full implementation. However, once all escrow companies are integrated, it would be much easier to verify employment and track employee history using the system. Young confirmed that users would be able to search for individual employees (by name) to see where they have worked, as long as they are registered in the system.

The advisory members discussed about name changes and how employment history would be handled in the NMLS. It was explained that when an individual changes their name, both the previous and current names will be visible in the system.

A question was raised about delays in escrow manager applications, specifically whether the department would be able to verify prior employment directly, speeding up the process in cases where the previous employer is unresponsive. Liang responded that if the information is available in the system, prior employment can be verified without needing to wait for the previous employer to respond, which could help expedite the process. However, challenges remain, such as discrepancies in reported job titles or when a company is out of business. In these cases, the system would provide the necessary information to verify employment without needing a response from the employer.

Davis raised concern regarding the level of disclosure for new license applications, especially when a new manager is being appointed but is still employed elsewhere. The question was whether information about pending applications would be publicly accessible. Liang clarified that pending applications are not visible to the public. Only after a license is either approved or denied does the information become publicly available.

Advisory members discussed that when an employee is moving to a new company, the current employer may not want the change to be publicly visible. The new system would not display pending applications or employment changes until the employee's record is updated.

Young emphasized that employment applications are not made public during the review process, and the system will not disclose pending applications until the employee's employment status changes. She clarified that pending applications would be visible to the public, but only as "pending," with no additional details. Once the application is finalized, the status will be updated accordingly.

Liang stated that industry-specific needs would be considered as the system continues to evolve, and stakeholders would be able to withhold the manager information until all necessary approvals are in place. This would allow for a smoother process when finalizing applications.

Young stated a new feature was introduced in NMLS, where third-party representatives, such as attorneys or license consultants, can now use a single login to manage multiple companies' applications. This system change is designed to streamline the process for those who assist multiple companies with licensing. Previously, multiple logins were required for each company, but the updated system now allows for a single login per user, with the ability to select which company they are working with.

Liang discussed the flexibility of the system, with mention that it is highly customizable to fit the specific needs of the industry.

Advisory members brought up the issue of out-of-state applicants who may not be able to complete a live scan fingerprinting process. Young explained that the system can accommodate this situation by allowing the submission of fingerprint cards as an alternative.

The advisory committee discussed the need for legislative changes to move onto NMLS. The committee agreed that in order to make NMLS the platform for licensing, changes need to be made to the Financial Code to specify this. While the specifics of those changes were not fully clear, it was agreed that this would require further discussion in a separate meeting.

Silberberg raised a question about the startup and implementation costs and challenges faced by other divisions. She emphasized the importance of understanding these costs before sponsoring a bill, to evaluate the potential burdens on the industry. She asked for more clarity on whether the costs would amount to a few thousand dollars or extend into the hundreds of thousands over several months.

Liang stated there would be time and resources needed to onboard staff and adapt workflows. He acknowledged that this process could take time but would ultimately improve efficiency. Oliver commented that while the upfront costs and timeline were still uncertain, there were examples from other programs that could help estimate these factors. She also acknowledged that the industry is already facing burdens due to the manual and paper-based processes in place, and that transitioning to an electronic system would ultimately save time and effort in the future. Liang stated he would confer with other DFPI law programs about implementation costs and provide that information during the next advisory meeting.

4. Escrow License

Juliana Tu discussed the ongoing issue regarding the license vetting of escrow companies, explaining that while these companies are required to vet their vendors, the vetting companies themselves are largely unregulated. Tsai, who had previously looked into the matter, clarified that under the California Consumer Financial Protection Law (CFPL), these vetting companies may not fall under the department's jurisdiction because they do not directly provide services to consumers. She mentioned that the department was still exploring the issue and emphasized the importance of gathering more examples to understand the full scope and determine any potential actions.

Silberberg raised concerns about unregulated third-party vetting services, which are often mandated by lenders for escrow companies. These services charge fees, creating a “pay-to-play” system, which some escrow companies view as unfair. Silberberg also highlighted that some companies were being blacklisted for not using these services. Tu shared the same concerns and suggested that the department could issue a clarification to help resolve the confusion, reaffirming that escrow companies are regulated by the department under stringent regulatory requirements.

Liang stated that discussions from prior meetings focused on elevating escrow agent licenses from business to professional licenses. He explained that most advisory members and public participants supported the change, with two members endorsing it on the condition that the broker exemption be removed. Two others expressed the need for further information. Liang emphasized that while the department held no formal position, the industry could sponsor a legislative bill to pursue this change. He then invited Cassel and Garcia to share their perspectives, as both had previously indicated the need for more deliberation.

Garcia stated that discussions on this topic had begun within the Escrow Institute but noted the lack of bandwidth to address the issue comprehensively due to the busy season. She estimated that answering key questions and drafting legislative language would require three to five years of effort. Cassel supported the idea of elevating the license, emphasizing the need to incorporate education requirements and attract younger professionals to sustain the industry. She called for developing structured plans, such as college-level courses, to ensure a pipeline of qualified candidates.

Tu agreed that education is critical, stating her experience in accessing professional training and designation support. She advocated for the department to collaborate with the industry on drafting legislation to avoid wasting time and resources. Davis echoed this sentiment, recalling past collaboration with the department to provide technical assistance on legislative efforts. He highlighted the need for clear guidance from the department to ensure proposals align with regulatory expectations. Liang acknowledged the concerns and committed to discussing these matters with the department’s new Legislative Deputy Commissioner to determine the level of support available.

Liang stated that the department must navigate multiple levels of approval before providing technical assistance, including securing permissions from controlling agencies, the Governor's office, and higher administrative levels. He emphasized the importance of following proper channels to avoid issues later and reiterated that no formal position could be taken before the Governor's office issued one.

Silberberg built on Liang’s remarks, expressing the need for collaboration and open dialogue to avoid duplicative efforts. She proposed that the committee use meetings to vet ideas and refine proposals systematically, ensuring they align with both industry and governmental expectations. Oliver agreed, suggesting the involvement of the department’s legislative deputy to streamline the process and address concerns effectively.

Garcia noted that while the Escrow Institute's Board had not taken a definitive stance, the topic required careful consideration. She emphasized the importance of thorough outreach to gauge industry support and avoid past mistakes where members opposed sponsored legislation. She also highlighted challenges in attracting new talent to the escrow profession, given its declining appeal and competitiveness in the job market.

Sender stressed the urgency of moving the professional designation discussion forward to avoid stagnation. He proposed forming a committee to develop actionable steps, as delays would hinder progress. Silberberg supported this approach, emphasizing the need for collaboration to align legislative goals with industry priorities. Silberberg stated would have a board meeting soon and this would probably be a topic of the board meeting. Liang acknowledged Sender's suggestion and committed to inviting the DFPI legislative deputy to future meetings.

Silberberg stated that it's important to evaluate the cost and its source before moving forward. She emphasized the need for a cost-benefit analysis and asked how business owners would share the financial burden. Silberberg added that if she were to support the proposal, she would need clear details about her financial responsibility.

Sender stated that the EIC should clarify its authority and role within the industry. He questioned whether the EIC is the appropriate entity to run a bill and asked whether individual companies or the broader industry should take the lead. Sender noted that the EIC is often viewed as the main organization, but private companies could also sponsor such initiatives if they choose.

Davis stated that collaboration within the industry is essential to initiate legislation. He explained that independent companies must come together to sponsor legislation either collectively or through an organization. Davis suggested that broader outreach efforts, such as surveys extended to all licensees and not just members of specific associations, would be helpful to understand the industry's perspective.

Liang stated that obtaining industry-wide support is critical for significant issues. Liang welcomed industry to coordinate listening sessions for licensees to voice their concerns and suggested inviting representatives from regulatory agencies to address questions during these sessions.

Silberberg stated that these listening sessions could help gather feedback and provide value to the process. She supported the idea of including program representatives to answer questions and help facilitate discussions.

Liang stated that one key issue to discuss is whether to elevate the licensing requirements for escrow officers and remove broker exemptions. He clarified that this was not a formal vote but rather an effort to gauge consensus within the group. Liang highlighted feedback so far indicating that the removal of broker exemptions might be a necessary step for broader support.

Silberberg stated that any changes to licensing requirements should be carefully evaluated. She pointed out that some members, including herself, prefer removing all exemptions for consistency across the industry. Silberberg emphasized that the industry, as the bill sponsor, should determine the details and work closely with stakeholders to finalize the proposal. Davis stated that elevating escrow licenses could involve separating business and professional licenses. He suggested treating company licenses as business permits while elevating individual licenses for employees like escrow officers and managers to a professional level. Davis noted that these decisions ultimately lie with the industry and require further discussion in dedicated meetings.

Liang stated that if the industry is going to remove certain exemptions, other agencies, such as the Department of Real Estate and the Department of Insurance, would also be stakeholders in this process. Liang stressed the importance of maintaining equity and consistency across regulators.

Young stated that linking individual licenses to the Nationwide Multistate Licensing System (NMLS) could streamline tracking and ensure uniformity. She suggested creating a registry-like system where employees could be assigned individual identifiers, even if they are not required to hold full professional licenses.

Silberberg stated that parity is essential. She explained that employees at independent companies should meet the same standards as those in title company escrow divisions. Silberberg noted that implementing professional licenses across the board could level the playing field and benefit the industry in the long term.

Liang stated that achieving this level of consistency requires extensive industry input. He encouraged the group to engage in discussions to build a cohesive proposal that addresses the concerns of all stakeholders. Liang reiterated that while the regulatory agency would provide guidance, the responsibility for drafting and advocating for the bill lies with the industry. Silberberg stated that the process will take time and should be approached with thoroughness and caution. She advised against rushing, emphasizing that careful planning is necessary to address all potential concerns. Silberberg concluded by stressing the importance of patience and collaboration to achieve meaningful and lasting changes for the industry.

5. Advisory Committee

Liang highlighted ongoing challenges in recruiting members for the Advisory Committee, including filling specialized positions such as a CPA representative. While some applications have been received, several do not meet the qualifications for specific roles. Liang noted that the voluntary nature of the committee and lack of reimbursement deter candidates, and the rigid categorization of companies (small, medium, and large based on annual liabilities) limits flexibility in appointing qualified members. He also addressed concerns about members serving multiple terms due to a lack of new applicants, low meeting participation, and a lack of diversity in committee representation.

Silberberg questioned how liability thresholds for company categories are determined and reset. Liang explained that these are recalculated annually based on prior-year liabilities, dividing the licensee population into equal thirds. However, this method often disqualifies previously eligible members whose companies move into different liability categories. Silberberg suggested reevaluating these thresholds to better reflect the fluid nature of business performance and ensure representation across all company sizes.

Silberberg and Watrous proposed adding "at-large" member positions to improve inclusivity. These roles could accommodate individuals with valuable expertise, such as retired industry professionals, technical experts, or representatives from adjacent industries like banking. Watrous emphasized the value of experienced industry veterans in mentoring and sharing insights, even if they do not fit existing categories. Davis suggested that at-large members could include technical specialists, such as those with expertise in escrow software, cybersecurity, or banking operations, to address emerging industry challenges like system integration and hacking threats.

Liang compared the committee structure to other advisory bodies, such as the Debt Collector Advisory Committee, which successfully recruits diverse members, including industry professionals, academics, and consumer advocates, without rigid categorization. Watrous expressed caution about introducing members from unrelated fields, emphasizing the importance of protecting the industry's interests.

Silberberg recommended outreach efforts to recruit CPA candidates through professional associations. Liang encouraged members to brainstorm ways to attract diverse, qualified applicants and address existing challenges. The group supported exploring broader membership criteria, such as creating at-large or technical expertise categories, while retaining essential roles.

6. Escrow Kickbacks

Committee members discussed concerns about kickback practices in the real estate and escrow industries, where escrow owners allegedly offer company shares to real estate brokers or agents in exchange for future business. This practice bypasses typical monetary transactions, violating laws regarding compensation and fairness. Cassel highlighted that it's

a "Wild West" environment, with escrow companies often offering agents a percentage of escrow fees in exchange for business. Some companies are conducting these transactions covertly, with some agents receiving up to 25% of escrow fees in return for their referrals.

Davis and others discussed the legal implications of these practices. They emphasized that there are lawful ways to integrate agents into companies, like through affiliate business disclosures, but that improper practices, such as compensating agents with shares or cash for business, are illegal. Davis mentioned a recent action by the DC District Attorney against a title company involved in such activities. There's a need for more stringent enforcement to prevent such illegal practices, as they are often difficult to track without concrete evidence.

Liang and others brought up the difficulty in tracing these kickbacks. It is challenging to track illegal payments like cash or gift cards, and the group acknowledges that enforcement needs clear proof, which can be hard to gather. They suggested the possibility of issuing notices to the industry, warning that stricter enforcement is coming. Oliver and others emphasized the importance of action and collaboration with regulatory bodies like the DRE to tackle these issues.

7. Examination Issues

Suzuki addressed various challenges within the regulatory unit, focusing on managing conservatorships and developing new examiners. He discussed the reorganization of the unit, which now includes three exam teams following the addition of Albert Saucedo. This restructuring became necessary due to the increasing workload, particularly as nearly 43% of field examiners are new and still developing their skills. This shift has placed additional pressure on experienced examiners, who handle both complex tasks and routine work.

Suzuki also highlighted ongoing conservatorships, especially the case involving Grow Escrow, Inc., where missing trust funds totaling \$850,000 were discovered. Examiners faced intense pressure to reconcile records and recover the funds. The growing number of conservatorships is further impacting the unit's resources. In addition to these responsibilities, examiners must manage routine audits, special exams, and other regulatory matters.

Advisory members also discussed training for new and experienced examiners, particularly in specialized escrow services. Garcia recognized the importance of such training and offered industry support, potentially through online or in-person sessions. Members also touched on cybersecurity threats, especially the risks of fraudulent wire instructions, and emphasized the need for continued vigilance in maintaining secure escrow practices. Despite the challenges, the committee stressed the importance of collaboration between the regulatory body and industry professionals to address these issues effectively.

Davis expressed concerns about the department's inability to efficiently complete examinations, pointing out that incomplete exams delay licensure, ownership changes, and business operations. He stressed the importance of understanding the backlog's extent and its impact on the industry, emphasizing that timely exam completion is crucial to preventing ongoing wrongdoing, as some companies continued illicit activities during examinations.

Oliver acknowledged the backlog and the difficulties posed by paper-based processes. She assured the group that efforts to address the backlog are ongoing, though more time is needed to resolve the issue fully. Oliver highlighted the need for a more electronic-driven system to streamline operations.

Suzuki agreed on the need for greater efficiency and recognized the competing priorities, including statutory exam plans, complaints, and inquiries. He reiterated that the department's primary focus is protecting consumers from harm and emphasized efforts to reduce bottlenecks and improve processes.

Silberberg suggested bringing in additional examiners, as had been done previously, to help alleviate the backlog. However, budgetary constraints have made this approach less effective in recent years. The committee agreed to revisit the issue in the next meeting and explore potential solutions, including adopting a more electronic-based system to enhance efficiency.

8. Enforcement Actions and Licensing Update

Liang updated the committee on enforcement actions and licensing statistics. The department took action against two companies, including placing one company under conservatorship for unauthorized disbursements and issuing an accusation to revoke a company's license for failing to submit audits and pay assessments. As of August 31st, there were 707 licensed escrow companies and 1,049 licensed locations, showing slight decreases from the previous year. There are 41 pending license surrenders, with 20 related to branch licenses from one company. The department has received 13 surrender applications since the last meeting.

Cassel pointed out that some companies may not fully understand the requirements for surrendering a license and suggested clearer reminders, especially for companies potentially heading towards conservatorship. Liang mentioned that examiners provide companies with a list of requirements for surrendering a license, which is also available on the department's website. The department is working on improving the website and making these resources more accessible, including updating the FAQ section and providing email contact information for compliance and examination inquiries.

Oliver emphasized the importance of keeping the industry informed about emerging threats, such as fraud, and suggested distributing more targeted communications, such as a commissioner's bulletin. Silberberg raised concerns about the challenges companies face when dealing with fraud and asked if the department would like to receive reports from licensees about potential fraud incidents. Liang confirmed that while reporting fraud is not mandatory, it would be helpful for the department to share information with the industry to improve awareness. Suzuki echoed this, stating that information shared by licensees helps the department address potential issues and protect the industry.

9. Public Comments

Silberberg inquired about the status of the department's fee study. Liang responded that while the fee study is nearly complete, the program has not received the final report or recommendations yet. Silberberg emphasizes the importance of sharing updates with the public and licensees.

10. Closing Remarks

Liang thanked everyone for their attendance and participation. The next meeting is tentatively scheduled for December 10, 2024, from 10:00 a.m. to 1:00 p.m. at the DFPI Los Angeles office. The meeting adjourned at 12:25 p.m.