



**NMLS Ombudsman Meeting
Double Tree Paradise Valley
Scottsdale, AZ**

North Central Ballroom
2:00 – 5:00 pm PST
February 6, 2012

Agenda:

1. Notification, document submission, and licensee posting suggestions – Exhibit 1

Sam Wolling
Prospect Mortgage

2. Facilitating Labor Mobility and Competition for Loan Originators through Approved Inactive Licensing – Exhibit 2

Pete Mills
Community Mortgage Baking Project

3. Federal Access to MLO state licensing record – Exhibit 3

Tim Doyle
CSBS

4. Transitional Licensing - Exhibit 4

Andrew Szalay
Mortgage Bankers Association

5. NMLS Consumer Access and NMLS Relationships

Michelle N. Boyer
Foundation Financial Group

6. Mortgage Call Report Issues – Exhibit 5

Jeff Ehrlich
John Adams Mortgage

7. Licensure requirement based on MLO residential address – Exhibit 6

Stephanie Ochoa
Kondaur Capital

8. PEO/Mortgage Firm Relationships – Exhibit 7

Andrea McHenry
National Association of Professional Employers Organizations

9. State Regulatory Actions in NMLS

Mary Pfaff
CSBS

10. Falsely Compelled Representations and Consumer Access – Exhibit 8

Costas Avrakotos
K&L Gates

11. Open Discussion (Time Permitting)

1) Notifications created upon the surrendering of a corporate license: Mortgage Lender/Mortgage Broker

It is likely that some companies have multiple licenses within a jurisdiction depending on the use of a trade name or DBA. For instance, UT, IA, AZ have stand alone licenses for each trade name that a company utilizes. It seems that upon a corporate surrender of one of these licenses – a notification is sent to **all** MLOs who hold a license in that jurisdiction with the following subject line:

Subject: NMLS - Administrative action taken on [Company Name Here]

Even though the company voluntarily surrendered the license, under its own volition, the electronic message regarding administrative action is sent to all applicable MLOs. The term “Administrative Action” would not seem applicable regarding a voluntary surrender, and it takes a significant amount of communication to properly relay to the stakeholders that there has been no “Administrative Action” taken on the company.

Moreover, many states have multiple licenses to select from and/or transition to as the needs of the company change. For instance, someone in a particular state might be licensed as a “Lender” and then decide to apply for a “Dual Broker/Lender license”. The same aforesaid notice is sent in this type of scenario as well – in which all parties are sent email notifications regarding an “Administrative Action” that was merely just the surrendering of one license type to apply for a new license type. Again, in this instance, it was solely at the company’s discretion to change the structure of its licensing, which resulted in an “Administrative Action” notification to stakeholders. It would seem the NMLS may want to change the notifications sent out to company’s/MLOs/etc relating to the surrender of a license type.

2) Document submission to regulators (new License Request and subsequent document submissions for Active License items)

On numerous occasions a company is required to submit documentation to state regulators. As is inevitable with any organization that receives an abundance of mail, the documents can get lost or delivered incorrectly. It would be helpful if a document upload process could be created (similar to the financial reporting capabilities whereby a licensee uploads last quarter’s financials) to allow licensees the ability to submit documents to regulators. On certain occasions, it is not uncommon for documents to be sent in multiple forms (facsimile, FedEx, email). A central repository for documents would be helpful for both regulators and licensees.

3) Providing a forum for Licensees to post comments to Regulators

Regulators have a convenient way of communicating with licensees on the NMLS via Active License items. This is extremely helpful in that an immediate communication is received, which is sent to all applicable parties, and the licensee can take immediate action when needed. Unfortunately, there is not a similar procedure/protocol for a licensee to answer the communication. At times certain regulators will place email addresses within the Active License item, which then allows for prompt communication between the licensee and regulator. In instances where an email address is not made available, the licensee must try and interpret the best way to send the information, whether to email a state’s general email box, send to the general mailing address, a combination of the two etc. Moreover,

without a proper format for a licensee to respond, the licensee must maintain copious records to indicate the exact form/timestamp/method of communication in case a regulator states they received no response. Proper communication methods between the licensee and regulator help both parties maintain accurate and up to date records

COMMUNITY MORTGAGE BANKING PROJECT

Facilitating Labor Mobility and Competition for Loan Originators

Problem

The SAFE Act defines a “state licensed loan originator” as an individual who:

- engages in loan origination activities,
- is not an employee of an insured depository or a subsidiary thereof, and
- is licensed by a state, and registered in the NMLS.

As a result of this definition, it is not possible in most states for a loan originator employed by a bank or bank subsidiary to become a state-licensed loan originator without first terminating their employment with the bank and becoming an employee of a non-bank lender. However, before they can engage in any origination activity, the former bank employee must get fully licensed, which could take 30 to 60 days or more to complete the required education, testing and background checks. Practically speaking, few nonbank lenders can afford to pay a nonproducing loan originator for that length. Moreover, even if the lender could absorb the cost, few high performing loan originators are willing to forego their pending book of business and go inactive among their referral sources for 60 or 90 days.

As a result, bank loan originators are unlikely to move from bank employers to nonbank lenders. This effectively limits their marketability to only one type of loan originator, namely insured depositories, even though their services may be highly valued by other lenders. By the same token, licensed loan officers working for nonbank lenders can freely go to for work bank lenders. In effect, the SAFE Act inadvertently restricts labor mobility, creating a one-way talent pool that is unfair to both bank-employed loan originators, who are limited in their employment options, and to non-bank lenders, who cannot compete for and attract bank-employed talent. This certainly is an unintended and unfair result, and it is exacerbated when large bank employers shrink or exit the retail mortgage business, as has occurred in recent months.

Proposed Solution

We understand that state regulators struggled with this issue when enacting their state SAFE Act laws, and that provisional licenses were considered in the process. Some states have established, or are considering legislation to create a provisional license to address this problem. Others have expressed opposition to provisional licensing because of potential enforcement challenges. Unfortunately, with large bank lenders exiting the retail origination space and others scaling back, loan originators and non-bank lenders need a solution to the problem now. To address the labor mobility problem without the use of a provisional license, the Community Mortgage Banking Project proposes that more states consider creating a “de novo inactive” status in their licensing systems. This has been done successfully in a handful of states (e.g., in Maryland and Louisiana), and in many cases it can be done without legislation.

Many states already have an “inactive” status for licensed loan originators. It is used for licensed loan originators who terminate employment with their nonbank sponsor (e.g., if a sponsor has

gone out of business, or the originator has become a bank employee). We would propose creating a “de novo” inactive status that could be used by bank employees that would like to take the coursework and pass the exams for their own professional development, and/or to improve their marketability to potential nonbank employers at a time when a number of banks are reducing their presence in the market. Under the current system, out of work (or soon to be out of work) loan officers now find their employment options limited, and nonbank lenders find themselves at a competitive disadvantage in competing for this talent. This is both unfair and unnecessary.

A de novo inactive status would allow a bank employee to complete the licensing process privately and be in the NMLS system, but without a sponsor. Once they decide to seek employment elsewhere, or if they are laid off, they could market themselves to both bank and nonbank lenders. If they chose a nonbank lender, they would be properly tested, licensed and qualified to do business on Day 1 of their new employment. To ensure privacy, the loan originator should be able to pursue their education, testing and background checks without notifying their current employer if they so choose.

The de novo inactive status has other benefits, as well. For example, new entrants to the mortgage field (e.g., recent college graduates) could also use the de novo inactive license to aid in their job search. They could take the coursework, pass the exams and then market themselves to prospective employers in a ready-to-work capacity.

Conceptually, the de novo inactive status would be similar to the real estate agent’s license. Many individuals complete their real estate agent’s coursework and exams on their own and then seek employment with a real estate brokerage firm. They are licensed, but cannot engage in the business until they are affiliated with a licensed real estate *broker*. Similarly, the holder of a de novo inactive license can demonstrate that they have taken the education, been tested, and had their background and financials checked, but cannot originate loans as a licensee without a non-bank sponsor to “activate” the license.

We believe the creation of a de novo inactive status provides a fair and workable solution to the labor mobility problem for both the individual bank employees and nonbank lenders. At the same time, it assures state regulators that only fully licensed individuals are originating loans for state licensed mortgage lenders.

We would like to work with AARMR, CSBS and individual state regulators to address this important issue. We believe this concept thoughtfully addresses the policy concerns of state regulators, while restoring fairness to the labor market for loan originators.

Issue Briefing

Subject: Limiting Institution Access to State Licensing MLO Information

February 2, 2012

Issue: Some state licensed companies have cited the ability of federally registered depository institutions to see mortgage loan originator's (MLOs) testing and education information in NMLS as a hindrance to those MLOs who are currently employed by a depository institution and would like to complete any state-required testing and education in order to seek work with a state-licensed company. To help alleviate this issue, it has been proposed to reduce the information available to NMLS federally registered institutions concerning a MLO's state licensing activities.

Background: NMLS is built upon the premise that, to the greatest extent possible, licensed and registered companies and individuals should have a single record in NMLS with information that is shared among regulators. This same approach extends to MLOs, where in each MLO should have a single record of information with information equally viewable by the regulators, the MLO, and companies that employ the MLO or for whom the MLO has given access to their record. Such information sharing is limited by certain law or regulations.¹

With the implementation of the NMLS Federal Registry, SRR was able to preserve the single record for each MLO, but due to the requirements of federal registration,² MLOs provide less information and in the case of disclosure questions, different information.

The system today allows employers, both state licensed companies and federal registered institutions to view both the state licensing information and the federal registration information. Once an MLO grants either a company or institution access to his or her NMLS record, the company or institution can see the MLO's entire record, including any information on the MLO's record that exists for state licensing or for federal registration.

¹ For instance, Federal Bureau of Investigation (FBI) requirements do not allow NMLS to share criminal history record information that is part of a MLO's record as a result of a license application with the MLO or the MLO's employer.

² 12 CFR 1007. In July, 2010, the federal banking agencies (Office of the Comptroller of the Currency, (former) Office of Thrift Supervision, Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the National Credit Union Administration), along with the Farm Credit Administration, published rules implementing the SAFE Act's federal registration requirement. Under §1061 of the Dodd-Frank Act, the SAFE Act's rulemaking authority regarding the federal registration of mortgage loan originators transferred to Consumer Financial Protection Bureau, which published the Interim Final Rule on December 19, 2011 under that authority.

State agencies have expressed an understanding of the business issues underlying the concerns of state licensed employers and are seeking to find ways to streamline the licensing process and help alleviate some obstacles that hamper the movement of qualified mortgage loan originator between depositories and non-depositories.

One issue that has been raised by state licensed companies as a deterrent to encouraging MLO registrants to become qualified for licensure prior to obtaining employment by a state-licensed entity is the ability for an institution to view the MLO's education and testing activities in NMLS. Currently, federally registered institutions can view through NMLS the state licensing information of MLOs for whom they have Access.³ This includes access to the following information:

- Employment History
- Testing Information
- Banking of Pre-licensure or Continuing Education hours
- License/Registration and Sponsorship Information
- Disclosure Questions
- Public Regulatory Actions
- Control Person associations information

Note that while federally registered institutions have access to this information concerning their registered MLOs, they do not receive notifications from the system when these events occur.

Likewise, state licensed companies in NMLS, when provided access to an MLO's record can view the MLO's federal registration information

- Employment History
- Registration information
- Disclosure Questions

Proposed Options

In order to address the concerns raised, the NMLS Mortgage Licensing Policy Committee⁴ is reviewing several options. The following proposed options to sever access have been developed for consideration:

1. Sever the ability for federal registered institutions' to access state licensing information on MLOs
2. Remove federal registered institutions' ability to access specific state licensing information (e.g., testing and education information), but retain ability to view other information.

³ Access to an MLO's NMLS record is provided to an Institution or company by the MLO and is a requirement for federal registration or state license Sponsorship of the MLO by the Institution or company. (Also, MLOs often grant access to prospective employers so that they may view the applicant's record.)

⁴ The membership of the Mortgage Licensing Policy Committee (MLPC) can be found here: <http://mortgage.nationwidelicensingsystem.org/about/Documents/MLPC%20Committee%20List.pdf>

3. Introduce the ability for MLO's to determine which information federal registered institutions can view.

Issues for Consideration

- In instances where an institution requires their MLO employees to take education or testing, these institutions could not confirm completion through the system.
- Institution would not know if MLO employees or prospective employees failed the SAFE MLO test.
- Some institutions, particularly the larger institutions, have reported a consistent use of MLO state information when making registration decisions. Of particular value is information on disclosure questions, the ability to view any reported regulatory actions,⁵ and the ability to review any applicable employment or Control Person relationships with other entities.

⁵ Regulatory actions that are deemed viewable will be on NMLS Consumer Access in July 2012.

Solutions for MLO Movement between Employers

States legislatures should enable their mortgage banking regulators to issue transitional licenses to allow well-qualified mortgage loan originators (MLOs) at registered institutions to change employment to state-regulated, licensed institutions so they may continue to originate while they work to meet that state's educational and testing requirements. A transitional license ought to be available to MLOs licensed in other states as well. In this way, customers would maintain access to qualified MLOs, the burden felt by recruiting state-regulated lenders (as well as the transitioning MLOs) would be eliminated, and the imbalance created by the federal SAFE Act statute would be "patched."

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August 9, 2011

Mortgage Bankers Association
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Re: Secure and Fair Enforcement for Mortgage Licensing Act of 2008; Transitional Licensing

Ladies and Gentlemen:

The Mortgage Bankers Association (MBA) has requested that we address three issues under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. § 5101 *et seq.*, also known as the "S.A.F.E. Mortgage Licensing Act of 2008" or "SAFE Act". This letter responds to that request.

We understand that under current State residential mortgage loan originator licensing frameworks, if (1) a registered mortgage loan originator employed by a depository institution, or certain subsidiaries thereof (Registered MLO), becomes employed by a State-licensed entity, or (2) a State-licensed mortgage loan originator employed by a State-licensed entity (Licensed MLO) wishes to become licensed in additional States, the MLO may not engage in loan origination activity until such time as he or she satisfies the licensing requirements of the State or States where he or she wishes to conduct business.

You asked us to address whether, consistent with the SAFE Act, a State may, subject to such conditions as the State may deem appropriate:

1. Provide for a transitional license for a loan originator who, pursuant to the SAFE Act, is a Registered MLO with a depository institution (or certain subsidiaries), leaves the employ of the depository institution (or a subsidiary) and becomes employed by a State-licensed entity so that the loan originator may immediately function as a loan originator with the new employer while pursuing a standard MLO license.
2. Provide for a transitional license for a loan originator who, pursuant to the SAFE Act, is a Licensed MLO with a State-licensed entity and is licensed in one State, leaves the employ of one State-licensed entity and becomes employed by another State-licensed entity that is licensed in a State in which the MLO is not, so that the loan originator may



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immediately function as a loan originator with the new employer while pursuing a standard MLO license.

3. Recognize the licensure of a Licensed MLO pursuant to the SAFE Act under the laws of another State as satisfying their own experience, educational and/or testing requirements for a standard MLO license.

As addressed more fully below, in our view the States may take any or all of such steps consistent with the SAFE Act.

We first address the background of the SAFE Act and what the SAFE Act actually requires with regard to the registration and licensing of loan originators. We then address United States Department of Housing and Urban Development (HUD) issued guidance, including the SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities final rule, 76 Fed. Reg. 38464 (2011) (Final Rule), as well as State actions and provisions that address or recognize experience, education and/or testing qualifications of other States. Finally, we address certain general principles of statutory construction regarding the interplay of Federal and State government power to show the explicit intent of Congress that is needed to find preemption in an area of traditional regulation by the States, such as professional licensing.

As used herein, the terms "loan originator" and "National Mortgage Licensing System and Registry" (NMLS) have the same meanings that they have in the SAFE Act.

The SAFE Act

Background. The SAFE Act was adopted by Congress in 2008 as part of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289 (HERA). Among the various provisions of HERA, (1) the first part addresses the government sponsored enterprises, the Federal Home Loan Banks, the Hope for Homeowners program and includes the SAFE Act, (2) the second part addresses the Federal Housing Administration, mortgage foreclosure protections for servicemembers, various housing assistance and related matters and includes the Mortgage Disclosure Improvement Act that made certain changes in Truth in Lending Act disclosure requirements, and (3) the third part addresses housing-related tax matters. HERA is a comprehensive Federal reaction to address the then growing crisis in housing finance and the economy in general.

Despite the Federal focus of HERA, the approach of Congress in the SAFE Act is very deferential to State power. Although Congress could have crafted a Federal licensing regime in lieu of a State system of licensing for loan originators, Congress chose a decidedly different path.

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In 2007 Congress knew that the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) were developing the NMLS. The United States House of Representatives passed a bill in November 2007, H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, as an early attempt to address the growing crisis in housing finance. The bill, which was not enacted, provided for the registration and licensing of loan originators through the NMLS, and these same provisions substantially formed the basis of the SAFE Act. (Various other provisions of the bill formed the basis of reforms contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203) (Dodd-Frank).) Thus, Congress initially chose a path of State registration and licensing as opposed to Federal registration and licensing, and continued on that path in the SAFE Act.

During the debate on H.R. 3915 that occurred on the date the bill was passed by the House, Representative Barney Frank, then the Chairman of the House Financial Services Committee (the Committee that reported the bill), addressed the substance of the bill. Representative Frank stated “There is a delicate balance here. I am not in favor and this bill does not in general preempt the rights of States to do what they think is necessary in the consumer protection area.” *Congressional Record*, H13967 (Nov. 15, 2007). Representative Frank then stated with respect to other provisions of the bill addressing the national secondary market “that we did believe some preemption is necessary. We have tried to define it precisely and hold it to a minimum necessary to have a functioning market.” *Id.* The statements of Representative Frank reflect that Congress did not intend for the mortgage registration and licensing provisions of H.R. 3915 to preempt the rights of the States in this area. And, as noted above, the provisions of the bill substantially formed the basis of the SAFE Act.

In the SAFE Act, Congress “encouraged” the States, through the CSBS and AARMR, to establish licensing and registration provisions for residential mortgage loan originators that accomplished ten specified objectives and satisfied standards set forth in the SAFE Act. Congress also provided an incentive for the States to so act by directing HUD to establish a backup system for the licensing and registration of loan originators in a State if the State is deemed by HUD not to have a sufficient licensing and registration system in place within a specified timeframe.¹ Thus, as long as the States established a licensing system and met the

¹ HUD’s authority under the SAFE Act was transferred to the Bureau of Consumer Financial Protection (CFPB) on July 21, 2011 pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. No. 111-203 §§ 1002(12), 1061, 1100. In addressing the transfer of the SAFE Act Final Rule and other rules to the CFPB, the CFPB addressed guidance issued by HUD and other agencies with respect to the various rules. The CFPB advised as follows:

The CFPB does not consider guidance or similar documents as falling within the meaning of enforceable “rules and orders” that are required to be listed pursuant to [Dodd-Frank] section 1063(i). However, by way of clarification, the CFPB notes that for laws with respect to which rulemaking authority will transfer to

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standards set forth in the SAFE Act, the licensing of loan originators would be exclusively a State endeavor.

Objectives of the SAFE Act. Congress adopted the SAFE Act to “increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud”. SAFE Act § 1502 (12 U.S.C. § 5101). Among the specific stated objectives of the SAFE Act are (1) providing for uniform licensing applications, (2) streamlining the licensing process and (3) reducing regulatory burdens. SAFE Act § 1502(1), (5) (12 U.S.C. § 5101(1), (5)).

Registration and Licensing. At its core, the SAFE Act provides for minimum standards to be adopted for the registration of loan originators who are employees of depository institutions (or certain of their subsidiaries) and the licensing of loan originators who are employees of State-licensed entities. SAFE Act §§ 1504-1507 (12 U.S.C. §§ 5103-5106). The Federal banking agencies were directed to develop and maintain a system for registration of loan originator employees of depository institutions (or certain of their subsidiaries) regulated by such an agency. SAFE Act § 1507 (12 U.S.C. § 5106). Also, the SAFE Act provides for the adoption at a State level of minimum licensing requirements for loan originators who are employees of State-licensed entities. SAFE Act §§ 1505-1506 (12 U.S.C. §§ 5104-5105).

With respect to the registration of a loan originator who is an employee of a depository institution (or certain of their subsidiaries), the SAFE Act provides for the furnishing of certain minimum information to the NMLS for background checking purposes. SAFE Act § 1507(a)(2) (12 U.S.C. § 5106(a)(2)).

With respect to the initial licensing of a loan originator under State law, the SAFE Act provides for:

the CFPB, the official commentary, guidance, and policy statements issued prior to July 21, 2011, by a transferor agency with exclusive rulemaking authority for the law in question (or similar documents that were jointly agreed to by all relevant agencies in the case of shared rulemaking authority) will be applied by the CFPB pending further CFPB action. The CFPB will give due consideration to the application of other written guidance, interpretations, and policy statements issued prior to July 21, 2011, by a transferor agency in light of all relevant factors, including: whether the agency had rulemaking authority for the law in question; the formality of the document in question and the weight afforded it by the issuing agency; the persuasiveness of the document; and whether the document conflicts with guidance or interpretations issued by another agency. The CFPB will seek over time to improve the clarity and uniformity of guidance regarding the laws it will administer as necessary in order to facilitate compliance with the Federal consumer financial laws.

76 Fed. Reg. 43569, 43570 (2011). Thus, guidance not rising to the level of official commentary, guidance and policy statements will not automatically be applied by the CFPB and any application of such guidance, interpretations and policy statements will be subject to the standards set forth by the CFPB.

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1. The furnishing of certain minimum information to the NMLS for background checking purposes.
2. Minimum standards related to (a) not having had a prior revocation of a loan originator license, (b) absence of certain prior criminal convictions, (c) financial responsibility, character and general fitness to serve the public as a loan originator, (d) pre-licensing education, (e) pre-licensing testing, and (f) net worth or a surety bond.

SAFE Act §§ 1505(c), (d) (12 U.S.C. §§ 5104(c), (d)).

With respect to the renewal of a loan originator license under State law, the SAFE Act requires a loan originator to continue to meet the minimum standards for an initial license, and satisfy minimum continuing education requirements. SAFE Act §§ 1506(a), (b) (12 U.S.C. §§ 5105(a), (b)).

Under the SAFE Act, Congress established a system where the registration of an MLO with a depository institution subject to an acceptable background check, and the licensing of an MLO with a State-licensed entity subject to additional requirements (including education and testing requirements), are alternative means of qualification. SAFE Act § 1504 (12 U.S.C. § 5103).

Minimum Standards. The minimum standards required by the SAFE Act for a Licensed MLO are just that—a uniform minimum level of standards that must be satisfied in order for a loan originator to qualify for a standard initial license as a Licensed MLO and then renew the standard license. The SAFE Act does not address the situation in which a Licensed MLO with a State-licensed entity, who has already satisfied the minimum SAFE Act standards for a Licensed MLO (plus any other requirements imposed by a State), changes employers to a company that also is a State-licensed entity, whether located in the same State or a different State. The SAFE Act also does not address the situation in which a Registered MLO with a depository institution (or certain subsidiaries), who has already satisfied the minimum SAFE Act standards for a Registered MLO (with registration and licensing under the SAFE Act being equivalent), changes employers to a company that is a State-licensed entity, whether located in the same State or a different State. The SAFE Act simply is silent on how States should address the transition of a loan originator who has already met the SAFE Act's minimum standards when the originator moves to a new employer, whether located in the same State or a different State.²

² States necessarily have to exercise discretion in setting out and administering their licensing frameworks. For example, with respect to Licensed MLOs, notwithstanding the lack of express direction in the SAFE Act or HUD's Final Rule on the issue of a Licensed MLO moving from one State-licensed entity to another within the same State, States have developed procedures to deal with this issue.

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State Law Not Preempted. The SAFE Act does not supplant State licensing frameworks with a Federal framework, and is deferential to State power to have a State licensing framework for loan originators. The only express override of State law in the SAFE Act is limited to the information confidentiality provisions of Section 1512 (12 U.S.C. § 5111), under which a State law that provides less confidentiality or a weaker privilege is superseded by the provisions of Section 1512.

Consistent with the SAFE Act's purposes, including the objectives of uniformity, streamlining of the licensing process and reducing regulatory burdens, the States are free to have their own licensing framework for loan originators, subject to the minimum standards of the SAFE Act.³ This freedom includes the ability of a State to establish a transitional license for a Registered MLO or Licensed MLO who changes employers to a company that is a State-licensed entity, subject to such conditions as the State may deem appropriate, which may include conditions deemed consistent with the consumer protection objectives of the SAFE Act (such as certifications regarding education, experience, or criminal background). The freedom also includes the ability of a State to recognize the licensure of a Licensed MLO pursuant to the SAFE Act under the laws of another State as satisfying their own experience, educational and/or testing qualifications for a Licensed MLO, subject to such conditions as a State may deem appropriate, which may include conditions deemed consistent with the consumer protection objectives of the SAFE Act (such as certifications).⁴

HUD Guidance

HUD has not publicly issued any formal or binding guidance on the issue of transitional licenses. HUD did not address the issue of transitional licenses in its SAFE Mortgage Licensing Act: HUD Responsibilities Under the SAFE Act; Proposed Rule, 74 Fed. Reg. 66548 (2009) (Proposed Rule). HUD did address the issue of reciprocity formally in its adoption of the Final Rule. The Final Rule is the only public formal guidance on the matter and in adopting the Final

³ HUD has stated to Congress that States have freedom to develop their own licensing and registration programs for MLOs. In its 2010 annual report to Congress (required by the SAFE Act), HUD stated that "Each state is free to develop its own program for licensing, registering, and supervising MLOs within its borders, provided that the state's program meets all of the minimum requirements of the SAFE Act." U.S. Department of Housing and Urban Development, Secure and Fair Enforcement for Mortgage Licensing Act, Report to Congress (Nov. 2010) p.1.

⁴ As noted above, provisions in H.R. 3915 substantially formed the basis for the SAFE Act. H.R. 3915 included a provision that "Any loan originator who is licensed by the Secretary under a system established under [the HUD backup licensing authority] for any State may not use such license to originate loans in any other State." H.R. 3915 § 107(f). The provision is not in the SAFE Act as enacted. Thus, if in fact HUD did adopt a backup licensing system for a State, Congress left the determination of whether that license should be recognized by other States for each State to decide.

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Rule HUD publically expressed considerable deference to the States in their development and implementation of a licensing scheme and the supervision of their MLOs. We address certain of this guidance below.

SAFE Act Final Rule. In connection with its responsibility under the SAFE Act to determine whether a State's law meets SAFE Act requirements, HUD codified the minimum standards for the licensing of residential mortgage originators in the Final Rule, which becomes effective August 29, 2011.

The supplementary information to the Final Rule specifically addresses the issue of reciprocity and the promotion of uniformity. In response to public comments to HUD's Proposed Rule advocating for the recognition by a State of the licensure of a MLO by other States⁵, HUD noted the following:

HUD's final rule does not require reciprocity, given the current variability in state laws. The SAFE Act sets the minimum requirements for the licensing of "loan originators" and does not allow HUD to preempt any state law requirements or to establish a maximum requirement. This final rule provides that a state must require an individual to obtain and maintain a license from that state in order to engage in the business of a loan originator with respect to any dwelling or residential real estate in that state. This final rule further provides that in order to grant a license to an individual, the state might find that the individual has satisfied the minimum eligibility requirements. HUD believes that this approach is consistent with the SAFE Act's preference that states implement their respective licensing regimes and the SAFE Act's establishment of minimum, rather than preemptive and uniform requirements. The approach also avoids incentivizing a "race to the bottom" among states. However, this final rule does not limit the extent to which a state may take into consideration or rely upon the findings made by another state in determining whether an individual is eligible under its own laws.

HUD will seek to promote uniform minimum standards in accordance with its overall responsibility for interpretation, implementation, and compliance with the SAFE Act. However, the SAFE Act's preference that states implement and enforce licensing, combined with the absence of preemptive authority over states that opt to exceed the minimum requirements, means that there will inevitably be

⁵ The March 5, 2010 letter from the Mortgage Bankers Association, American Financial Services Association and the American Bankers Association to HUD commenting on HUD's Proposed Rule raised the need for, and importance of, reciprocity and provisional licenses.

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a diversity of approaches among states. HUD has worked extensively with the CSBS and ARMOR in this process, and will remain accessible to state regulators, other Federal regulators, and trade associations. (Emphasis added)

76 Fed. Reg. 38464, 38482 (2011).

HUD Frequently Asked Questions. Prior to issuing its Proposed Rule, HUD provided informal guidance on certain topics in the form of Frequently Asked Questions (FAQs), including the following regarding provisional licensing:

QUESTION: May a state issue “provisional licenses” to mortgage loan originators who have not completed the SAFE Act’s testing and education, or prior to a state’s completion of the required background check?

ANSWER: A state may issue a SAFE-compliant loan originator license only upon evidence sufficient to support findings by the state agency that each of the minimum licensing standards has been met. Nothing in the SAFE Act prohibits a state from seeking additional evidence after it issues a license or from reconsidering the accuracy of a prior finding upon considering additional evidence that becomes available to the state. Please also see section D of HUD’s Commentary on the Model State Law (“HUD’s Commentary,” also available on the SAFE Act page of this website) for guidance on dates by which states must require individuals to obtain SAFE-compliant licenses.

As HUD stated in the introductory language to the FAQs, it was issuing the informal guidance in advance of a formal notice-and-comment rulemaking process. As such, the FAQ was issued simply as informal guidance, and guidance that, despite continuing to be posted, is inconsistent with the Final Rule on various issues, including the licensing of loan modification personnel.⁶

Final Rule Rejection of FAQ. It is notable that HUD did not address, or seek comment on, the issue of provisional or transitional licensing in its Proposed Rule, and the Final Rule is silent on the points. HUD did elect to address the related issue of reciprocity in adopting the Final Rule, which was subject to the formal notice-and-comment process. In so doing, HUD implicitly rejected the FAQ by indicating that “the final rule does not require reciprocity . . .” 76 Fed. Reg. 38464, 38482 (2011). HUD also made clear in adopting the Final Rule that States may take into consideration or rely upon the findings made by another State in determining whether an individual is eligible for licensure under its own laws. 76 Fed. Reg. 38464, 38482 (2011). Thus, in adopting the Final Rule HUD decided to leave the matter of reciprocity regarding eligibility for

⁶ The Final Rule does not include loan modification personnel in the definition of MLO, and HUD decided to defer to the CFPB the issue of licensing for loan modification personnel. 76 Fed. Reg. 38464, 38483 (2011).

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licensing to the discretion of the States. Discretion that encompasses reciprocity regarding eligibility for licensing necessarily includes discretion regarding transitional licensing. States are free under the SAFE Act to determine the extent to which they will incorporate reciprocity and transitional licensing into their licensing frameworks.

State Actions

Consistent with the flexibility afforded to the States by the SAFE Act, a significant number of States elected to participate in a testing and education certification process, pursuant to which States could waive SAFE Act-mandated testing and/or education requirements if the State determined and certified that a MLO had met equivalent testing and/or education requirements. Approximately 17 States elected to participate in the testing certification process, and approximately 33 States elected to participate in the education certification process.⁷ Although the deadline for certification of previously completed testing and/or education was December 22, 2010, this reflects that State agencies understand, and have exercised, the discretion granted to them to determine what amounts to substantial compliance with their own licensing laws as mandated by the SAFE Act.

New Mexico has incorporated the concept of transitional licensing into their licensing framework. New Mexico law provides that any mortgage loan originator “who is currently licensed in another State through the Nationwide Mortgage Licensing System & Registry may be granted a temporary mortgage loan originator license valid for ninety days while the mortgage loan originator completes the education and testing requirements of the New Mexico Mortgage Loan Originator Licensing Act.” N.M. Stat. Ann. § 58-21B-4(D). In order to be eligible for the temporary license, the mortgage loan originator must hold an active mortgage loan originator license issued by another State regulatory agency. The active mortgage loan originator license must be valid for more than ninety days from the date the individual applies for the temporary New Mexico Mortgage Loan Originator License. N.M. Stat. Ann. § 58-21B-4(D). A temporary New Mexico Mortgage Loan Originator License will be issued provided that a mortgage loan originator: (1) provides written notification, in the form of a letter or an e-mail, advising the Mortgage Unit of the New Mexico Financial Institutions that the individual is requesting a 90-day temporary license; (2) the individual maintains a mortgage loan originator license in another jurisdiction that is in an “Approved” status; (3) applies for and pays for his or her New Mexico Mortgage Loan Originator License; and (4) is sponsored by a New Mexico-licensed Mortgage Loan Company. N.M. Admin. Code tit. 12, §12.19.2.18. Once these requirements are satisfied, the mortgage loan originator’s license status is changed to an “Approved-Conditional” status and the individual may originate loans for 90 days.

⁷ NMLS Certification Participation for SAFE Testing and Educations Requirements.
<http://mortgage.nationwidelicensingsystem.org/profreq/Documents/Certification%20State%20List.pdf>

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As noted above, HUD is charged with determining whether each State has enacted and is operating a fully SAFE Act-compliant licensing scheme. To our knowledge, HUD has not taken the position that New Mexico has a non SAFE Act-compliant law. Additionally, to our knowledge, HUD has not determined that any of the more than 30 States that elected to participate in the testing and/or education certification process has a non SAFE Act-compliant law.

Statutory Construction

In addressing the respective powers of the Federal government and State governments under the United States Constitution, the United States Supreme Court has observed:

As every schoolchild learns, our Constitution establishes a system of dual sovereignty between the States and the Federal Government. This Court also has recognized this fundamental principle. In *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990), “[w]e beg[a]n with the axiom that, under our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause.” Over 120 years ago, the Court described the constitutional scheme of dual sovereigns:

“[T]he people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence,” . . . “[W]ithout the States in union, there could be no such political body as the United States.” Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.” *Texas v. White*, 7 Wall. 700, 725 (1869), quoting *Lane County v. Oregon*, 7 Wall. 71, 76 (1869).

Gregory v. Ashcroft, 501 U.S. 452, 457 (1991). In *Gregory* the Court addressed whether a provision of the Missouri constitution mandating retirement at age 70 for judges violated the Federal Age Discrimination in Employment Act of 1967 and the Equal Protection Clause of the Constitution. The Court noted that the “case concerns a state constitutional provision through which the people of Missouri establish a qualification for those who sit as judges. This provision goes beyond an area traditionally regulated by the States; it is a decision of the most fundamental sort for a sovereign entity. Through the structure of its government, and the character of those who

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exercise government authority, a State defines itself as a sovereign.” *Gregory*, at 460. The Court, thus, considered establishing the qualifications for judges to be a fundamental aspect of State power.

The Court considered whether an exception to the Act’s provisions for “an appointee on the policymaking level” covered judges and, thus, would permit a State to set a mandatory retirement age for judges without regard to the Act. *Gregory*, at 464-466. The Court stated that whether the exception applied to judges was “at least ambiguous” and that in “the face of such ambiguity [the Court] will not attribute to Congress an intent to intrude on state governmental functions regardless of whether Congress acted pursuant to its Commerce Clause powers or § 5 of the Fourteenth Amendment.” *Gregory*, at 467. “Congress should make its intention ‘clear and manifest’ if it intends to preempt the historic powers of the States.” *Gregory*, at 461, citing *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). The Court held that the Federal statute and the United States Constitution did not prohibit Missouri from imposing a mandatory retirement age for judges.

In the *Rice* decision cited in *Gregory* the Court addressed whether grain warehouses licensed by the United States Secretary of Agriculture under the United States Warehouse Act were subject to certain State regulatory requirements. The court addressed the standard used for the analysis as follows:

Congress legislated here in a field which the States have traditionally occupied. So we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. Such a purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. Or the state policy may produce a result inconsistent with the objective of the federal statute. It is often a perplexing question whether Congress has precluded state action or by the choice of selective regulatory measures has left the police power of the States undisturbed except as the state and federal regulations collide.

Rice, at 230 (citations removed).

The Court determined that based on amendments to the Federal statute in question Congress changed from a joint Federal and State regulatory framework to an exclusive Federal regulatory framework pursuant to which the power, jurisdiction and authority of the Secretary of

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Agriculture under the statute “shall be exclusive with respect to all persons” licensed under the statute. *Rice*, at 232-234. With regard to nine matters at issue determined to fall within such exclusive authority of the Secretary of Agriculture, the Court held that the State had no authority regarding the matters. *Rice*, at 235-236. However, with regard to three additional matters the Court noted that the Federal statute contained no express provisions relating to the matters, and that while there was a potential for conflict between Federal and State law the Court would not find preemption, observing that “[i]n more ambiguous situations than this we have refused to hold that state regulation was superseded by federal law.” *Rice*, at 236-237. The high standard simply was not met as to the three matters.

The Court followed the approach in another matter dealing with a traditional area for State regulation—the licensing of professionals. In *Sperry v. Florida*, 373 U.S. 379 (1963), the Court addressed whether the Florida Bar could preclude a non-lawyer resident in Florida from practicing before the United States Patent Office pursuant to the individual’s registration with such Office. A Federal law provided that the Commissioner of Patents may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent Office, and the Commissioner explicitly granted such authority to the non-lawyer pursuant to a registration with the Office. *Sperry*, at 384-385.

The Supreme Court of Florida concluded that the non-lawyer’s conduct constituted the unauthorized practice of law that the State of Florida, acting under its police power, could properly prohibit, and that Federal law did not empower the United States to authorize such conduct in Florida. *Sperry*, at 382. The non-lawyer challenged the finding only to the extent it applied to his Federal license to practice before the Patent Office. The United States Supreme Court did not question the determination of the Florida Supreme Court under Florida law that the preparation and prosecution of patent applications for others constitutes the practice of law, and the Court did not doubt that “Florida has a substantial interest in regulating the practice of law within the State and that, in the absence of federal legislation, it could validly prohibit nonlawyers from engaging in this circumscribed form of patent practice.” *Sperry*, at 383. However, with respect to the non-lawyer’s practice before the Patent Office, the Court stated that the Federal “statute . . . expressly permits the Commissioner to authorize practice before the Patent Office by nonlawyers, and the Commissioner has explicitly granted such authority. If the authorization is unqualified, then, by virtue of the Supremacy Clause, Florida may not deny to those failing to meet its own qualifications the right to perform the functions within the scope of the federal authority.” *Sperry*, at 385. Based on the express authorization, the Court held that Florida could not preclude the non-lawyer from practicing pursuant to his Federal license before the Patent Office.

In *Sperry* the Court recognized that the licensing of professionals falls within the general police power of a State. The Court found that Congress had determined to override that power in

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connection with representation before the United States Patent Office by a non-lawyer based on an explicit intention of Congress set forth in Federal legislation to provide for such representation by non-lawyers.

The Court also has recognized that silence in a statute is not sufficient to establish a Congressional intent to preempt. *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991). The issue before the Court was whether the Federal Insecticide, Fungicide and Rodenticide Act preempted a local ordinance regulating the use of pesticides. The Court noted that the Act specified several roles for State and local authorities, such as providing for the production of records for inspection upon request of any State or political subdivision duly designated by the Administrator of the Environmental Protection Agency, and directing the Administrator to cooperate with any State or political subdivision. *Mortier*, at 599-601. The Court also noted that the Act nowhere expressly supersedes local regulation of pesticide use. *Mortier*, at 606.

The Court set forth the following approach to assessing whether a Federal law precludes State regulation in an area:

Under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, state laws that “interfere with, or are contrary to the laws of congress, made in pursuance of the constitution” are invalid. The ways in which federal law may preempt state law are well established, and in the first instance turn on congressional intent. Congress’ intent to supplant state authority in a particular field may be expressed in the terms of the statute. Absent explicit preemptive language, Congress’ intent to supersede state law in a given area may nonetheless be implicit if a scheme of federal regulation is “so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,” if “the Act of Congress . . . touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject,” or if the goals “sought to be obtained” and the “obligations imposed” reveal a purpose to preclude state authority. When considering pre-emption, “we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.”

Even when Congress has not chosen to occupy a particular field, preemption may occur to the extent that state and federal law actually conflict. Such a conflict arises when “compliance with both federal and state regulations is a physical impossibility,” or when a state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”

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It is, finally, axiomatic that, “for the purposes of the Supremacy Clause the constitutionality of local ordinances is analyzed in the same way as that of statewide laws.”

Mortier, at 604-605 (citations omitted).

The Court then stated:

We agree that neither the language of the statute nor its legislative history, standing alone, would suffice to preempt local regulation. But it is also our view that, even when considered together, the language and the legislative materials relied on [by lower courts to determine there was preemption] are insufficient to demonstrate the necessary congressional intent to preempt. As for the statutory language, it is wholly inadequate to convey an express preemptive intent on its own. [The Act] plainly authorizes the “States” to regulate pesticides, and just as plainly is silent with reference to local governments. Mere silence, in this context, cannot suffice to establish a “clear and manifest purpose” to preempt local authority.

Mortier, at 607 (citing *Rice*). Thus, it takes much more than silence to find Federal preemption of the ability of a State, or a local government of a State, to regulate in an area. There must be an explicit statement of an intent to preempt, the Federal scheme of regulation must be so dominant that the Federal regulation occupies the field and State regulation is precluded, or there must be a clear conflict between Federal and State regulation. None existed in *Mortier*, and none exist with the SAFE Act.

Finally, we note that the Court more recently has stated that “Preemption analysis ‘start[s] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.’” *City of Columbus v. Ours Garage & Wrecker Service, Inc.*, 536 U.S. 424, 438 (2002) (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). (In *Ours Garage* the Court determined that an exception in a Federal law regulating motor carriers that permitted State regulation with respect to the safety of motor vehicles should be read to permit safety regulation by local jurisdictions. In *Medtronic* the Court determined that a Federal law regulating medical devices and included an express preemption of certain State law did not preempt a lawsuit against a medical device manufacture under a State common law negligence claim.)

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Conclusion

It is clear that the SAFE Act established two parallel systems for qualification of loan originators: a State system requiring licensing for employees of State-licensed entities, and a federal system requiring registration for employees of depository institutions (and certain subsidiaries). The SAFE Act is silent on how loan originators are to be qualified when they move between these systems or how licensed originators may be qualified if they move from one State-licensed entity to a State-licensed entity in another State. And under principles established by the United States Supreme Court, much more than silence is required to find Federal preemption of State law, particularly in an area of traditional State regulation, such as the licensing of professionals. The SAFE Act simply does not supplant State licensing frameworks with a Federal framework, and is deferential to State power in the implementation of a SAFE-compliant licensing scheme, including without limitation providing for transitional licensing and the recognition of qualifications under the laws of another State. For the reasons set forth above, we conclude that, consistent with the SAFE Act, a State may, subject to such conditions as the State may deem appropriate:

1. Provide for a transitional license for a loan originator who, pursuant to the SAFE Act, is a Registered MLO with a depository institution (or certain subsidiaries), leaves the employ of the depository institution (or a subsidiary) and becomes employed by a State-licensed entity so that the loan originator may immediately function as a loan originator with the new employer while pursuing a standard MLO license.
2. Provide for a transitional license for a loan originator who, pursuant to the SAFE Act, is a Licensed MLO with a State-licensed entity and is licensed in one State, leaves the employ of one State-licensed entity and becomes employed by another State-licensed entity that is licensed in a State in which the MLO is not, so that the loan originator may immediately function as a loan originator with the new employer while pursuing a standard MLO license.
3. Recognize the licensure of a Licensed MLO pursuant to the SAFE Act under the laws of another State as satisfying their own experience, educational and/or testing requirements for a standard MLO license.

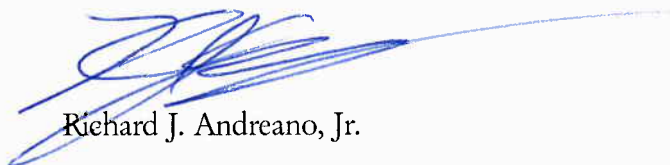
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Respectfully submitted,



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**MBA’S TRANSITIONAL LICENSING MODEL AMENDMENT
to the AARMR/CSBS Model SAFE Act Bill**

MSL XX.XXX.010 TITLE—This Act may be cited as the “[State] Secure and Fair Enforcement for Mortgage Licensing Act of 2009 or [State] S.A.F.E. Mortgage Licensing Act of 2009.”

MSL XX.XXX.020 PURPOSE OF THIS ACT [Optional language for states that do not have language sufficiently covering PL 110-289, Sec. 1508(d)(1)]— The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon [State]’s consumers, [State]’s economy, the neighborhoods and communities of [State], and the housing and real estate industry. The Legislature finds that accessibility to mortgage credit is vital to the state’s citizens. The Legislature also finds that it is essential for the protection of the citizens of [State] and the stability of [State]’s economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The Legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this Act is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators. Therefore the Legislature establishes within this Act:

(1) **SYSTEM OF SUPERVISION AND ENFORCEMENT**—An effective system of supervision and enforcement of the mortgage lending industry, including:

- (a) The authority to issue licenses to conduct business under this Act, including the authority to write rules or regulations or adopt procedures necessary to the licensing of persons covered under this Act.
- (b) The authority to deny, suspend, condition or revoke licenses issued under this Act.
- (c) The authority to examine, investigate and conduct enforcement actions as necessary to carry out the intended purposes of this Act, including the authority to subpoena witnesses and documents, enter orders, including cease and desist orders, order restitution and monetary penalties and order the removal and ban of individuals from office or employment.

(2) **BROAD ADMINISTRATIVE AUTHORITY**—That the Commissioner shall have the broad administrative authority to administer, interpret and enforce this Act, and promulgate rules or regulations implementing this Act, in order to carry out the intentions of the Legislature.

MSL XX.XXX.030 DEFINITIONS—For purposes of this Act, the following definitions shall apply:

(1) **DEPOSITORY INSTITUTION**—The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(2) **FEDERAL BANKING AGENCIES**—The term “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(3) **IMMEDIATE FAMILY MEMBER**—The term “immediate family member” means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(4) **INDIVIDUAL**—The term “individual” means a natural person.

(5) **LOAN PROCESSOR OR UNDERWRITER**—

(a) **IN GENERAL**—The term “loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under [reference appropriate state mortgage licensing laws here].

(b) **CLERICAL OR SUPPORT DUTIES**—For purposes of subsection (a), the term “clerical or support duties” may include subsequent to the receipt of an application—

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(c) **REPRESENTATIONS TO THE PUBLIC**—An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(6) **MORTGAGE LOAN ORIGINATOR**—

(a) **IN GENERAL**—The term “mortgage loan originator”—

(i) Means an individual who for compensation or gain or in the expectation of compensation or gain—

(A) Takes a residential mortgage loan application; or

(B) Offers or negotiates terms of a residential mortgage loan;

(ii) Does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in MSL XX.XXX.040(4);

(iii) Does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with [State] law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(iv) Does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.

(b) **REAL ESTATE BROKERAGE ACTIVITY DEFINED**—For purposes of this Act the term “real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including—

- (i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);
- (iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
- (v) Offering to engage in any activity, or act in any capacity, described in subsections (i), (ii), (iii), or (iv) of this section.

(7) **NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY**—The term “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(8) **NONTRADITIONAL MORTGAGE PRODUCT**—The term “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(9) **PERSON**—The term “person” means a natural person, corporation, company, limited liability company, partnership, or association.

(10) **REGISTERED MORTGAGE LOAN ORIGINATOR**—The term “registered mortgage loan originator” means any individual who—

- (a) Meets the definition of mortgage loan originator and is an employee of—
 - (i) A depository institution;
 - (ii) A subsidiary that is—
 - (A) Owned and controlled by a depository institution; and
 - (B) Regulated by a Federal banking agency; or
 - (iii) An institution regulated by the Farm Credit Administration; and
- (b) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(11) **RESIDENTIAL MORTGAGE LOAN**—The term “residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(12) **RESIDENTIAL REAL ESTATE**—The term “residential real estate” means any real property located in [State], upon which is constructed or intended to be constructed a dwelling.

(13) **UNIQUE IDENTIFIER**—The term “unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

MSL XX.XXX.040 LICENSE AND REGISTRATION REQUIRED—

(1) IN GENERAL—An individual, unless specifically exempted from this Act under subsection (3) of this section, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this State without first obtaining and maintaining annually a license under this Act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(2) EFFECTIVE DATE [To be used in states without mortgage loan originator licensing as of July 30, 2008]—In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (1) of this section shall be July 31, 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

OR

(2) EFFECTIVE DATE [To be used in states with mortgage loan originator licensing as of July 30, 2008]—In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (1):

(a) For all individuals other than individuals described in subsection (b) shall be July 31, 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

(b) For all individuals licensed as mortgage loan originators as of the enactment of this Act shall be January 1, 2011, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

(3) EXEMPTION FROM THIS ACT—The following are exempt from this Act:

(a) Registered Mortgage Loan Originators, when acting for an entity described in MSL XX.XXX.030(10)(a)(i),(ii) or (iii) are exempt from this Act.

(b) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(c) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(e) A transitional licensee during the term of a transitional license granted in accordance with (5) below.

(4) INDEPENDENT CONTRACTOR LOAN PROCESSORS OR UNDERWRITERS—A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under MSL XX.XXX.040(1). Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(5) TRANSITIONAL LICENSE—A mortgage loan originator who is granted a transitional license in accordance with this subsection (5), hereinafter a “transitional licensee,” may engage in the business of a mortgage loan originator with respect to any dwelling located in [this State] during the term of the transitional license unless such license is terminated earlier because [State agency] determines that the originator should no longer be granted a transitional license.

(a) Definitions - For purposes of this subsection the following definitions shall apply:

(i) OUT-OF-STATE MORTGAGE LOAN ORIGINATOR — The term “out-of-state mortgage loan originator” means an individual who has an active license to originate mortgage loans pursuant to the law of any state or territory of the United States other than [this State] and is registered, fingerprinted and maintains a unique identifier through the National Mortgage Licensing System and Registry at the time such originator submits a transitional license application to [State agency].

(ii) REGISTERED MORTGAGE LOAN ORIGINATOR — The term “registered mortgage loan originator” has the same meaning as in MSL XX.XXX.030 (10).

(iii) SPONSOR – The term “sponsor” means a lender company or mortgage brokerage company which meets the net worth requirements of [this State or State agency], employs an applicant for a transitional mortgage license and during the term of the applicant’s transitional license either (1) covers such applicant under its surety bond; or (2) pays into the [name of state fund] on behalf of such applicant the required amount for a transitional licensee, as appropriate.

(iv) TRANSITIONAL LICENSE —The term “transitional license” means a license to engage in the business of a mortgage loan originator with respect to any dwelling located in [this State] during the term of the transitional license.

(v) TRANSITIONAL LICENSE APPLICATION—The term “transitional license application” means the form that a registered loan originator and an out-of-state loan originator shall use to apply for a transitional license. Such form shall be uniform for use in all states and meet National Mortgage Licensing System and Registry requirements.

(vi) TRANSITIONAL LICENSEE— The term “transitional licensee” means an Out-of-State Originator or Registered Loan Originator that has submitted a Transitional License Application, complied with the requirements of this subsection and has been granted a transitional license by [this State or State agency].

(b) IN GENERAL--A registered loan originator or an out-of state loan originator may engage in the business of a mortgage loan originator with respect to any dwelling located in [State] if such loan originator applies for and is granted a transitional license. Such originator may engage in the business of a mortgage loan originator during the term of

the transitional license of [120 days minimum] while such originator completes the requirements of [this State] for licensure. Nothing in this section, however, precludes a finding by [this State] that a particular out-of-state licensee satisfies the educational and testing requirements of this state for licensure and that such out-of-state licensee may engage in the business of a mortgage loan originator without a transitional license.

(c) QUALIFICATIONS FOR TRANSITIONAL LICENSE—[This State or state agency] may issue a transitional license if [this State or State agency] determines that the applicant for such license has:

(i) Submitted a fully completed transitional license application that includes a certification that as of the date of the transitional license application, the applicant:

- a. Has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.
- b. Has not been convicted of, or pled guilty or *nolo contendere* to, a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for a transitional license and registration; or at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering; and, provided, that any pardon of a conviction shall not be a conviction for purposes of this subsection.

(ii) Been employed for a reasonable period of [recommend two] years as a mortgage loan originator;

(iii) A valid unique identifier, registration and fingerprints on file with the Nationwide Mortgage Licensing System and Registry;

(iv) Authorized the Nationwide Mortgage Licensing System and Registry to obtain a credit report for submission to [this State or State agency];

(v) A Sponsor that certifies employment of the applicant and signs the Transitional License Application; and

(vi) Submitted a reasonable fee for the transitional license in the amount of \$[recommended \$100 maximum].

(d) COMPLETION OF LICENSURE REQUIREMENTS— Transitional licensees shall satisfy all applicable licensing requirements such as education and testing on state requirements for out-of-state loan originators during the term of the transitional license. Such term shall begin on the date a transitional license is approved and terminate [minimum of 120] days thereafter. When the licensing requirements are satisfied, the transitional licensee

shall be granted a mortgage loan originator license. If the requirements are not satisfied, or the transitional license is terminated by [State agency], the applicant may not engage in the business of a mortgage loan originator with respect to any dwelling located in [State] unless: the applicant satisfies the mortgage loan originator licensure requirements of [this State]; the applicant is exempt from such requirements on a basis other than a transitional license; or [the State agency], in its discretion, extends the term of the transitional license.

(e) AUTHORITY TO ESTABLISH TRANSITIONAL LICENSING RULES, REGULATIONS OR INTERIM PROCEDURES—For the purposes of implementing an orderly and efficient transitional licensing process the [State agency] may establish rules or regulations and procedures for action on applications.

MSL XX.XXX.050 STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE—

(1) APPLICATION FORM—Applicants for a license shall apply in a form as prescribed by the Commissioner. Each such form shall contain content as set forth by rule, regulation, instruction or procedure of the Commissioner and may be changed or updated as necessary by the Commissioner in order to carry out the purposes of this Act. Such forms shall uniform to the maximum extent possible with those of other states and shall be compatible with the NMLS.

(2) COMMISSIONER MAY ESTABLISH RELATIONSHIPS OR CONTRACTS—In order to fulfill the purposes of this Act, the Commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Act.

(3) WAIVE OR MODIFY REQUIREMENTS [Optional language if needed by a state.]—For the purpose of participating in the Nationwide Mortgage Licensing System & Registry, the Commissioner is authorized to waive or modify, in whole or in part, by rule, regulation or order, any or all of the requirements of this chapter and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System & Registry.

(4) BACKGROUND CHECKS—In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including—

(a) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain—

(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(5) AGENT FOR PURPOSES OF REQUESTING AND DISTRIBUTING CRIMINAL INFORMATION— For the purposes of this section and in order to reduce the points of contact

which the Federal Bureau of Investigation may have to maintain for purposes of subsection (4)(a) and (b)(ii) of this section the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(6) **AGENT FOR PURPOSES OF REQUESTING AND DISTRIBUTING NON-CRIMINAL INFORMATION**—For the purposes of this section and in order to reduce the points of contact which the Commissioner may have to maintain for purposes of subsection (4)(b)(i) and (ii) of this section the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner.

MSL XX.XXX.060 ISSUANCE OF LICENSE—The Commissioner shall not issue a mortgage loan originator license unless the Commissioner makes at a minimum the following findings:

(1) **NO LICENSE REVOCATION**—The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.

(2) **NO FELONY CONVICTION**—The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court—

(a) During the 7-year period preceding the date of the application for licensing and registration; or

(b) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

(c) Provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.

(3) **CHARACTER AND FITNESS**—The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this Act.

(a) For purposes of this subsection a person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include, but not be limited to:

(i) Current outstanding judgments, except judgments solely as a result of medical expenses;

(ii) Current outstanding tax liens or other government liens and filings;

(iii) Foreclosures within the past three years;

(iv) A pattern of seriously delinquent accounts within the past three years.

(4) **PRE-LICENSING EDUCATION**—The applicant has completed the pre-licensing education requirement described in subsection MSL XX.XXX.070.

(5) **WRITTEN TEST**—The applicant has passed a written test that meets the test requirement described in subsection MSL XX.XXX.080.

(6) **NET WORTH, SURETY BOND OR STATE FUND REQUIREMENT**—The applicant has met the [States must choose one: net worth, surety bond requirement, or paid into a State fund] as required pursuant to MSL XX.XXX.140.

MSL XX.XXX.070 PRE-LICENSING AND RE-LICENSING EDUCATION OF LOAN ORIGINATORS—

(1) **MINIMUM EDUCATIONAL REQUIREMENTS**—In order to meet the pre-licensing education requirement referred to in subsection MSL XX.XXX.060(4) a person shall complete at least 20 hours of education approved in accordance with subsection (2) of this section, which shall include at least—

- (a) 3 hours of Federal law and regulations;
- (b) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) **APPROVED EDUCATIONAL COURSES**—For purposes of subsection (1) of this section, pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(3) **APPROVAL OF EMPLOYER AND AFFILIATE EDUCATIONAL COURSES**—Nothing in this section shall preclude any pre-licensing education course, as approved by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(4) **VENUE OF EDUCATION**—Pre-licensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) **RECIPROCITY OF EDUCATION**—The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsections (1)(a), (b) and (c) of this section for any state shall be accepted as credit towards completion of pre-licensing education requirements in [State].

(6) **RE-LICENSING EDUCATION REQUIREMENTS**—A person previously licensed under this Act subsequent to the Effective Date of this Act applying to be licensed again must prove that they have completed all of the continuing education requirements for the year in which the license was last held.

MSL XX.XXX.080 TESTING OF LOAN ORIGINATORS—

(1) **IN GENERAL**—In order to meet the written test requirement referred to in MSL XX.XXX.060(5), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(2) **QUALIFIED TEST**—A written test shall not be treated as a qualified written test for purposes of subsection (1) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including—

- (a) Ethics;

- (b) Federal law and regulation pertaining to mortgage origination;
 - (c) State law and regulation pertaining to mortgage origination;
 - (d) Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.
- (3) **TESTING LOCATION**—Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.
- (4) **MINIMUM COMPETENCE**—
- (a) **PASSING SCORE**—An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.
 - (b) **INITIAL RETESTS**—An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test.
 - (c) **SUBSEQUENT RETESTS**—After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.
 - (d) **RETEST AFTER LAPSE OF LICENSE**—A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

MSL XX.XXX.090 STANDARDS FOR LICENSE RENEWAL—

- (1) **IN GENERAL**—The minimum standards for license renewal for mortgage loan originators shall include the following:
- (a) The mortgage loan originator continues to meet the minimum standards for license issuance under MSL XX.XXX.060(1)-(6).
 - (b) The mortgage loan originator has satisfied the annual continuing education requirements described in MSL XX.XXX.100.
 - (c) The mortgage loan originator has paid all required fees for renewal of the license.
- (2) **FAILURE TO SATISFY MINIMUM STANDARDS OF LICENSE RENEWAL**—The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The Commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

MSL XX.XXX.100 CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS—

- (1) **IN GENERAL**—In order to meet the annual continuing education requirements referred to in section XX.XXX.090(1)(b), a licensed mortgage loan originator shall complete at least 8 hours of education approved in accordance with subsection (2) of this section, which shall include at least—
- (a) 3 hours of Federal law and regulations;
 - (b) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and

- fair lending issues; and
- (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.
- (2) **APPROVED EDUCATIONAL COURSES**—For purposes of subsection (1) of this section, continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.
- (3) **APPROVAL OF EMPLOYER AND AFFILIATE EDUCATIONAL COURSES**—Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.
- (4) **VENUE OF EDUCATION**—Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.
- (5) **CALCULATION OF CONTINUING EDUCATION CREDITS**—A licensed mortgage loan originator—
- (a) Except for MSL XX.XXX.090(2) and subsection (9) of this section may only receive credit for a continuing education course in the year in which the course is taken; and
 - (b) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.
- (6) **INSTRUCTOR CREDIT**—A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.
- (7) **RECIPROCITY OF EDUCATION**—A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsections (1)(a), (b) and (c) of this section for any state shall be accepted as credit towards completion of continuing education requirements in [State].
- (8) **LAPSE IN LICENSE**—A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.
- (9) **MAKE UP OF CONTINUING EDUCATION**—A person meeting the requirements of MSL XX.XXX.090(1)(a) and (c) may make up any deficiency in continuing education as established by rule or regulation of the Commissioner.

MSL XX.XXX.110 AUTHORITY TO REQUIRE LICENSE—In addition to any other duties imposed upon the Commissioner by law, the Commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and CSBS/AARMR Model State Law for the Implementation of the S.A.F.E. Act Registry. In order to carry out this requirement the Commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the Commissioner may establish [by rule/regulation or order] requirements as necessary, including but not limited to:

- (1) **BACKGROUND CHECKS**—Background checks for:
- (a) Criminal history through fingerprint or other databases;

- (b) Civil or administrative records;
 - (c) Credit history; or
 - (d) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.
- (2) FEES—The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;
- (3) SETTING DATES—The setting or resetting as necessary of renewal or reporting dates; and
- (4) OTHER—Requirements for amending or surrendering a license or any other such activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

MSL XX.XXX.120 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS—The Commissioner shall establish a process whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the Commissioner.

MSL XX.XXX.130 ENFORCEMENT AUTHORITIES, VIOLATIONS AND PENALTIES—

- (1) In order to ensure the effective supervision and enforcement of this Act the Commissioner may, pursuant to the [Administrative Procedures Act]:
- (a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this Act, rules or regulations issued under this Act or order or directive entered under this Act.
 - (b) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of MSL XX.XXX.060 or MSL XX.XXX.090, or withholds information or makes a material misstatement in an application for a license or renewal of a license.
 - (c) Order restitution against persons subject to this Act for violations of this Act.
 - (d) Impose fines on persons subject to this Act pursuant to subsections (2), (3) and (4) of this section.
 - (e) Issue orders or directives under this Act as follows:
 - (i) Order or direct persons subject to this Act to cease and desist from conducting business, including immediate Transitional orders to cease and desist.
 - (ii) Order or direct persons subject to this Act to cease any harmful activities or violations of this Act, including immediate Transitional orders to cease and desist.
 - (iii) Enter immediate Transitional orders to cease business under a license or interim license issued pursuant to the authority granted under XX.XXX.040(5) if the Commissioner determines that such license was erroneously granted or the licensee is currently in violation of this Act;
 - (iv) Order or direct such other affirmative action as the Commissioner deems necessary.
- (2) The Commissioner may impose a civil penalty on a mortgage loan originator or person subject to this Act, if the Commissioner finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this Act has violated or failed to comply with any requirement of this Act or any regulation prescribed by the Commissioner under this Act or order issued under authority of this Act.
- (3) The maximum amount of penalty for each act or omission described in subsection (2) of this

section shall be \$25,000.

(4) Each violation or failure to comply with any directive or order of the Commissioner is a separate and distinct violation or failure.

MSL XX.XXX.140 [Pursuant to PL 110-289, Title V, Section 1508(d)(6), each state will choose one of the following options.]

SURETY BOND REQUIRED—

(1) **COVERAGE, FORM AND REGULATIONS**—Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Act, the surety bond of such person subject to this Act can be used in lieu of the mortgage loan originator's surety bond requirement.

(a) The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection (2) of this section.

(b) The surety bond shall be in a form as prescribed by the Commissioner.

(c) The Commissioner may promulgate rules or regulations with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this Act.

(2) **PENAL SUM OF SURETY BOND**—The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the Commissioner.

(3) **ACTION ON BOND**—When an action is commenced on a licensee's bond the Commissioner may require the filing of a new bond.

(4) **NEW BOND**—Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

OR

MINIMUM NET WORTH REQUIRED—

(1) **MINIMUM NET WORTH**—A minimum net worth shall be continuously maintained for mortgage loan originators in accordance with this section. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Act, the net worth of such person subject to this Act can be used in lieu of the mortgage loan originator's minimum net worth requirement.

(a) Minimum net worth shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the Commissioner.

(b) The Commissioner may promulgate rules or regulations with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this Act.

OR

STATE FUND—[Each state choosing this option will draft unique language establishing a fund.]

MSL XX.XXX.150 CONFIDENTIALITY—In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing—

(1) **PROTECTIONS**—Except as otherwise provided in Public Law 110-289, Section 1512, the

requirements under any Federal law or [state citation for public disclosure law] regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal law or [state citation of public disclosure law].

(2) **AGREEMENTS AND SHARING ARRANGEMENTS**—For these purposes, the Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies as established by rule, regulation or order of the Commissioner.

(3) **NONAPPLICABILITY OF CERTAIN REQUIREMENTS**—Information or material that is subject to a privilege or confidentiality under subsection (1) of this section shall not be subject to—

(a) Disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(4) **COORDINATION WITH** [State citation of public disclosure law]—[State citation of public disclosure law] relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) shall be superseded by the requirements of this section.

(5) **PUBLIC ACCESS TO INFORMATION**—This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

MSL XX.XXX.160 [For states lacking sufficient investigation or examination authority for compliance with S.A.F.E. Sec. 1515.] INVESTIGATION AND EXAMINATION

AUTHORITY—In addition to any authority allowed under this Act the Commissioner shall have the authority to conduct investigations and examinations as follows:

(1) **AUTHORITY TO ACCESS INFORMATION**—For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this Act, the Commissioner shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including but not limited to:

(a) Criminal, civil and administrative history information, including nonconviction data as specified in [state criminal code citation]; and

(b) Personal history and experience information including independent credit reports

obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(c) Any other documents, information or evidence the Commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.

(2) **INVESTIGATION, EXAMINATION, AND SUBPOENA AUTHORITY**—For the purposes of investigating violations or complaints arising under this Act, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual or person subject to this Act, as often as necessary in order to carry out the purposes of this Act. The Commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry.

(3) **AVAILABILITY OF BOOKS AND RECORDS**—Each licensee, individual or person subject to this Act shall make available to the Commissioner upon request the books and records relating to the operations of such licensee, individual or person subject to this Act. The Commissioner shall have access to such books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual or person subject to this Act concerning their business.

(4) **REPORTS AND OTHER INFORMATION AS DIRECTED**—Each licensee, individual or person subject to this Act shall make or compile reports or prepare other information as directed by the Commissioner in order to carry out the purposes of this section including but not limited to:

(a) Accounting compilations;

(b) Information lists and data concerning loan transactions in a format prescribed by the Commissioner; or

(c) Such other information deemed necessary to carry out the purposes of this section.

(5) **CONTROL ACCESS TO RECORDS**—In making any examination or investigation authorized by this Act, the Commissioner may control access to any documents and records of the licensee or person under examination or investigation. The Commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this Act, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(6) **ADDITIONAL AUTHORITY**—In order to carry out the purposes of this section, the Commissioner may:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing

resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;

(c) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or person subject to this Act;

(d) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(e) Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this Act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the Commissioner.

(7) EFFECT OF AUTHORITY—The authority of this section shall remain in effect, whether such a licensee, individual or person subject to this Act acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.

(8) WITHHOLD RECORDS—No licensee, individual or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

MSL XX.XXX.170 [This language is optional for states with insufficient coverage of prohibited practices. Each state will provide its own intro and include the practices as necessary. Practices 6, 8 and 10 directly support requirements in the S.A.F.E. Act. The remaining sections support the stated objectives of the S.A.F.E. Act.] PROHIBITED ACTS AND PRACTICES—It is a violation of this Act for a person or individual subject to this Act to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this Act may earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Conduct any business covered by this Act without holding a valid license as required under this Act, or assist or aide and abet any person in the conduct of business under this Act without a valid license as required under this Act ;

(7) Fail to make disclosures as required by this Act and any other applicable state or federal law including regulations thereunder;

(8) Fail to comply with this Act or rules or regulations promulgated under this Act, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this Act;

(9) Make, in any manner, any false or deceptive statement or representation [optional add on: including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising];

(10) Negligently make any false statement or knowingly and willfully make any omission of

material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the Commissioner or another governmental agency;

(11) Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this Act;

(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

(14) Fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

MSL XX.XXX.180 MORTGAGE CALL REPORTS—Each [mortgage licensee] shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

MSL XX.XXX.190 REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY—[Notwithstanding or Subject to state privacy law] the Commissioner is required to report regularly violations of this act, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in [MSL XX.XXX.150].

MSL XX.XXX.200 [For applicable states only.] PRIVATELY INSURED CREDIT UNIONS—Non-federally insured credit unions which employ loan originators, as defined in PL 110-289, Title V, the S.A.F.E. Act, shall register such employees with the Nationwide Mortgage Licensing System and Registry by furnishing the information concerning the employees' identity set forth in Section 1507(a)(2) of PL 110-289, Title V.

MSL XX.XXX.210 UNIQUE IDENTIFIER SHOWN—The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule, regulation or order of the Commissioner.

MSL XX.XXX.220 SEVERABILITY—If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

MSL XX.XXX.230 EFFECTIVE DATE—The effective date of this Act shall be July 31, 2009.



MBA's Transitional Licensing Proposal Outline

- **Overview:** MBA drafted an amendment to the Conference of State Bank Supervisors (CSBS) and American Association of Residential Mortgage Regulators (AARMR) state model language. The amendment explicitly permits transitional licensing of registered and out-of-state licensed mortgage loan originators pending completion of appropriate state licensing requirements. It is intended to serve as either a statutory amendment to a state's licensing law or as a free standing regulation implementing such law. Notably, the amendment is accompanied by a legal opinion that makes clear that states may adopt such provisions.
- **Background:** Under SAFE, requirements for the qualification of mortgage loan originators differ depending on whether the mortgage loan originator works for a state or federally regulated company (lender or mortgage broker). Loan originators for state-regulated companies must be both licensed and registered. Loan originators for federally regulated lenders, however, must only be registered (because they are only subject to federal requirements.)

Currently, mortgage originators of federally regulated institutions and other states, no matter how experienced, must await training and licensure before they can work for and serve customers of state-regulated lenders. In addition, before a licensed or registered loan originator of one state can operate in another state, the originator must satisfy the second state's licensing requirements even though they may be well-qualified, resulting in significantly delayed service to consumers.

- Consequently, state regulated companies, including smaller enterprises, are disadvantaged in attracting and putting to work experienced originators from federally regulated institutions or other states. On the other hand, federally regulated lenders can easily attract and hire qualified loan originators of state regulated entities and put them to work immediately. Consumers patronizing state regulated lenders suffer from decreased choices and potentially increased financing costs. This amendment will rectify these concerns.
- **The Amendment:** The amendment permits qualified registered loan originators and out-of-state loan originators to be issued a transitional license while successfully completing appropriate state licensing requirements, including any pre-licensing education and a state-specific licensing test that a state may deem appropriate.

- In order to qualify for a transitional license, an out-of-state loan originator and a registered loan originator must:
 1. Submit an application on a standard national form;
 2. Certify that the applicant: (a) is registered and has been employed by a compan(ies) for a period of at least [recommend two years] prior to the date of the application as a mortgage loan originator; and (b) as of the date of application for a transitional license, has never had a mortgage loan originator license revoked, been convicted of a felony in the last seven years or ever involving fraud, dishonesty, breach of trust or money laundering;
 3. Maintain a valid unique identifier through the Nationwide Mortgage Licensing System and Registry;
 4. Authorize the NMLSR to obtain a credit report;
 5. Be employed by a qualified company licensed in the NMLSR (sponsor) that will cover the applicant under its surety bond during the term of the transitional license or contribute to a state fund on the applicant's behalf; and
 6. Provide a reasonable fee established at the discretion of the State in an amount [not exceeding \$100].
- A transitional mortgage license would be effective for a minimum of 120 days from the date the application is approved. During that time, the applicant will complete the requirements that the state deems appropriate.
- **Legal Opinion:** Consistent with the purposes of SAFE and in the absence of preemption, states may grant transitional licenses to registered and out-of-state licensed loan originators so they may work as loan originators within their states pending licensure.

Questions? Comments? Please contact:

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Jeff Ehrlich – John Adams Mortgage

Do you foresee a time when the call reports can be completed via an interface with an LOS? The LOS(in our case Mortgage Builder) captures all of this information, so being able to develop a template to pull this would be great.

Do you know of any 3rd party providers that provide this type of work?

The data quality notices are very vague. Is there a way to develop a hard stop for a data point so that correcting for the lender is easier? If not a hard stop, highlighting the incorrect data? will save the end user a lot of time and grief.

Any thought to developing a centralized platform for call report information that could be used for NMLS, Fannie, HUD, VA etc? Again, a lot of saved time for the end user.

Stephanie Ochoa – Kondaur Capital

Essentially, PA and a couple of other states are requesting that licenses be obtained by loan originators based on **where the RMLO is located instead of where the property is located (for which a loan may be obtained)** and thus subject to a different set of laws in a state that has no authority nor jurisdiction.

Question: Does an in-state employee looking to offer mortgages on out-of-state properties only (e.g. second and/or vacation homes) need to have a Massachusetts MLO license in order to make such mortgages, or are the licensing requirements driven by the state within which the property is located and therefore no Massachusetts MLO license is needed since the loans are not on Massachusetts properties?

PEOs and Mortgage Lenders

BACKGROUND

Professional Employer Organizations (PEOs) enable clients to cost-effectively outsource the management of human resources, employee benefits, payroll and workers' compensation. PEO clients focus on their core competencies to maintain and grow their businesses in a safe and sound manner. The PEO serves its client, the small or mid-size business and provides resources to protect the business and maintain compliance with government regulations.

PEOs provide their services to small businesses through a co-employment arrangement in which a contractual agreement is entered into by the PEO and the small business client to co-employ the client's existing workforce. The co-employment agreement outlines the rights and responsibilities of each party with regard to the covered employees, and also establishes an employment relationship between the PEO and the covered employee. The client maintains the employer relationship with its employees and retains responsibility for the operation of the client's business, as well as the day to day activities of the employees.

Businesses today need help managing increasingly complex employee related matters such as health benefits, workers' compensation claims, payroll, payroll tax compliance, and unemployment insurance claims. They contract with a PEO to assume these responsibilities and provide expertise in human resources management. This allows the PEO client to concentrate on the operational and revenue-producing side of its operations.

Between 1980 and 2000, the number of labor laws and regulations grew by almost two thirds, says the U.S. Small Business Administration, which estimated owners of small or mid-sized business spent up to a quarter of their time on employment-related paperwork. PEOs assume much of this burdensome responsibility and help companies comply with all these regulations.

A PEO provides integrated services to effectively manage critical human resource responsibilities and employer risks for clients. A PEO delivers these services by establishing and maintaining an employer relationship with the employees at the client's worksite and by contractually assuming certain employer rights, responsibilities, and risk. However, for purposes

of complying with federal and state regulations, the PEO does not control a mortgage lender's employee as it relates to the SAFE Act and HUD, CFPB regulations.

DEFINITION OF THE ISSUE

After receiving comments during the rulemaking process, in promulgating the SAFE Act final rule, federal regulators deferred to states for defining mortgage firm employees and consideration of issues such as the right to control the employee and issuance of W2s. In a co-employment arrangement, the W2 is issued by the PEO, since the PEO is responsible for the payment of wages and the remittance of payroll taxes as required in the co-employment agreement and by some state PEO licensing provisions. Even though the W-2 is issued by the PEO, the client remains the employer of the employee, and maintains control of all business activities involving the mortgage lender's business. Therefore, the use of the W-2 as the sole factor in defining the employer in a co-employment relationship with a mortgage lender, is not a useful tool and does not adequately reflect the reality of a co-employment arrangement.

The interpretation has varied by certain state banking regulators. While some regulators say the PEO arrangement will not permit mortgage firms to outsource their payroll processing services, others have acknowledged the role of PEOs and provide flexibility as it relates to mortgage firms pursuant to the SAFE Act and state regulatory purview. This has caused an inconsistent application of laws across states, making it difficult for mortgage lenders with licensed employees to operate in multiple states. Therefore, more consistent and uniform guidance is needed to assist those mortgage lenders that want to take advantage of the services offered by PEOs. PEOs play an important role in ensuring mortgage firm compliance with federal and state employment laws and regulations. By ensuring businesses are complying with these laws, a PEO ultimately is supporting consumer protection and the mortgage lender's overall regulatory compliance.

PROPOSED SOLUTION

State regulatory agencies consistently permit mortgage lenders the flexibility to outsource the processing of payroll/human resources services. Therefore, a co-employment arrangement between a PEO and mortgage lender should be allowed to assist and encourage the mortgage

lender to focus on overall compliance and lending related business activities. If preferred, the PEO and mortgage lenders may execute an addendum to client service agreements certifying that the PEO does not control the employees for any purpose related to HUD, CFPB, and other federal or state regulatory agencies. In addition, mortgage regulators can refer to state PEO licensing statutes with provisions that clarify that the client is the responsible for the professional activities of licensed employee in a co-employment relationship. Thus, the mortgage lender would retain control of these employees and remain responsible for the licensing of these individuals pursuant to state Residential Mortgage Licensing Acts. These statutes can be used to support regulatory guidance and positions allowing co-employment relationships.

Businesses across America have discovered the incredible value of PEOs because they provide:

- Relief from the burden of employment administrative matters.
- A wide range of personnel management solutions through a team of professionals.
- Improved employment practices, compliance and risk management to reduce liabilities.
- Access to a comprehensive employee benefits package, allowing clients to be competitive in the labor market.
- Assistance to improve productivity and profitability.

Falsely Compelled Representations-- One particularly vexing concern is when a state requires a licensee to make a filing, or to make a filing in a certain way that would lead to a false attestation. For example, a servicer applying for a license in a state must obtain a mortgage lender license. As the mortgage lender license authorizes the licensee to make, broker, or service mortgage loans, the state regulators want the servicer to designate that it conducts first mortgage lending and first mortgage loan brokering business, etc. when completing the other business page on the NMLS. As the servicer does not make or broker mortgage loans, the servicer is making a false attestation on the NMLS when it certifies that the information and statements contained herein are true, accurate and complete. In addition, the licensee gives false impression of its activities to other states that may prompt action or an inquiry. Moreover, with more licenses being managed through the NMLS, the greater the likelihood that false attestations will be made if states continue with this practice.

Consumer Access-- With respect to Consumer Access, it is our understanding that licensees should be able to run a search in consumer access for branch offices licensed in a given state that is an accurate reflection of current branch approvals in an "active" status. However, for a license with a large number of branch offices, when you do a search and filter by state for branches with authority to conduct business in the state the System lists all branches that are:

- (i) currently approved in the state - which branches are identified as "Yes - authorized to conduct business";
- (ii) not approved in the state, which branches are identified as "No - not authorized to conduct business", and
- (iii) identified as "Yes- authorized to conduct business."

When you subsequently click on "Go to Branch" to get the details on approval information (i.e. date of approval, license number, etc.). you may find that the branch is not approved in the state in which you are doing the search. This is confusing when you do a search by state to determine what branches have authority to engage in mortgage activities in a given state. Is this simply a filter issue that is not working properly and can be corrected?