



**NMLS Ombudsman
Hotel Nikko
San Francisco, CA
Nikko I**

9:30am-12:00pm (PT)
August 9, 2011

Agenda:

1. NMLS Ombudsman General Overview
 - Update on Previously Submitted Issues

*Deb Bortner
NMLS Ombudsman
Director, Non-Depository Institutions
Washington Department of Financial Institutions*

2. NMLS Mortgage Call Report Update

*Rich Cortes
Principal Financial Examiner
Connecticut Department of Banking*

3. Regulatory Action Reporting in NMLS

*Louisa Broudy
Deputy Commissioner
California Department of Corporations*

4. Transitional Licensing

*Ken Markison
Associate Vice President, Regulatory Counsel
Mortgage Bankers Association*

5. Licensing of Mortgage Insurance Underwriters

David Dodd
Vice President & Associate General Counsel
Genworth Mortgage Insurance Corporation

6. Branch Issues in NMLS

Jenifer Edwards
Licensing Manager
Primary Residential Mortgage Incorporated

7. Open Question and Answer



MBA's Transitional Licensing Outline

August 4, 2011

- **Overview:** MBA is drafting an amendment to the Conference of Bank Supervisors (CSBS) and American Association of Residential Mortgage Regulators (AARMR) state model language. The amendment would explicitly permit transitional licensing of registered and out-of-state licensed mortgage loan originators pending their 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. Also, before a licensed and 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 and their service to consumers is significantly delayed.

- Consequently, state-regulated companies, including smaller enterprises, are disadvantaged in attracting and putting to work well qualified originators from federally regulated institutions or other states. On the other hand, federally regulated lenders can easily attract and hire well-qualified loan originators of state regulated entities and put them to work immediately. Consumers patronizing state regulated entities suffer from decreased choices and potentially increased financing costs. This amendment will rectify these concerns.
- **The Proposed Amendment:** The amendment would permit a qualified "registered loan originator" and a qualified "out-of-state loan originator" 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 [one year or other reasonable period no less than one year] 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. Be employed by a qualified company licensed in the NMLS (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
 5. 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 let us know:

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Mortgage insurance company affiliates only provide underwriting services to lenders and do not meet the general state law definitions of “mortgage broker”, “mortgage lender” or “mortgage banker”. Because such companies do not engage in mortgage broker or lending activities, they are not required to be licensed and thus should be exempt from state broker license requirements so they can sponsor their individual underwriters applying for state loan originator licenses through an exempt company registration on NMLS.

Issue: Mortgage insurance company affiliates (“MI Affiliates”) provide underwriting services nationwide to a variety of national and regional mortgage lenders, as well as smaller community banks and credit unions. In view of the final HUD rule published June 30th, company supervisors have been completing the education and testing requirements (both national and additional state-specific) and applying for state loan originator licenses so that they can supervise and direct company underwriters. However, these individuals are unable to obtain their MLO license because many state laws require sponsorship and/or employment by a licensed mortgage broker or lender, or a company exempt from licensing (available company exemptions are limited and vary by state).

General Background: While a specific corporate structure may vary, in general MI Affiliates are part of a holding company that includes state-licensed and regulated mortgage insurers (“MIs”). Personnel within the holding company are W-2 employees of a mortgage insurance company. The other subsidiaries within the holding company have no employees, so MI employees operate all entities within the holding company, including the MI Affiliate. Insurance company directors and senior officers are subjected to fingerprinting and state background check requirements.

The MI Affiliate does not originate, broker or fund mortgage loans, and only provides loan underwriting services to lenders ancillary to the mortgage insurance coverage provided by the MIs. Such underwriting services do not involve any borrower contact or the discussion or negotiation of loan terms. Rather, the MI Affiliate merely reviews loan application information and documents provided by the lender to determine compliance with lender loan program guidelines. *Since the MI Affiliate only provides underwriting services, it does not act as a “mortgage broker”, “mortgage banker” or “mortgage lender” as those terms are generally defined under State law.*

Furthermore, the MI Affiliate has no authority to override or revise the lender’s guidelines. The mortgage lender is free to accept or reject the MI Affiliate underwriter’s determination of loan compliance, and the lender always makes the final decision whether to offer a loan to the prospective borrower. Finally, the mortgage lender is solely responsible for: (1) providing the borrower with any consumer disclosures required under applicable laws and regulations; and (2) determining the compliance of any mortgage loan with federal or state laws or regulations relating to consumer credit protection, truth-in-lending, equal credit opportunity, and unfair or deceptive acts or practices.

Proposed Solution: Since the MI Affiliate only provides underwriting services, it is not a “mortgage broker” or “mortgage lender” as defined under State law, so is not required to be licensed. Since it is not a “mortgage broker” or “mortgage lender” there is no need to attempt to apply an exemption that exists in State law for entities that act as a mortgage broker or lender. Therefore, the MI Affiliate should be granted exempt company status in all states so they may sponsor their underwriters who become licensed loan originators. Alternatively, if states determine that a company license is nonetheless required in order to sponsor the underwriter, the Texas model offers a reasonable solution. Texas offers an “Independent Contractor Processor/Underwriter Company License”, and such license may be obtained upon payment of an application fee and submission of an MU-4 by a licensed individual.