



STATE OF INDIANA

DEPARTMENT OF FINANCIAL INSTITUTIONS



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Date: November 6, 2009

Subjects: Mortgage Loan Originator Licensure
Compliance – Loan Broker Statute

To: First Lien Mortgage Lending Licensees
Subordinate Lien Mortgage Lending Licensees

Enclosed are two documents of importance to mortgage lending entities licensed with the Indiana Department of Financial Institutions (DFI).

One document is a Q & A to help explain mortgage loan originator licensing requirements under the Secure and Fair Enforcement for Mortgage Licensing Act, as promulgated by the DFI at 750 IAC 9 *et seq.* Additional information will be posted at the DFI website listed in the letterhead above as it become available.

The other document is a policy position issued in conjunction with the Indiana Secretary of State Securities Division that outlines compliance guidance for DFI licensees conducting loan brokering business.

These documents will also be provided in an email to each licensee's NMLS contact, along with a request for an email response to a question about the number of MLO licensees each company will license with DFI. A response to that email is required and appreciated.

Contact me if the attached information is not clear and you have licensing or compliance questions not addressed in the two documents.

Sincerely,

Mark Tarpey
Division Supervisor
Consumer Credit Division

Enclosures

MBT/jh

November 6, 2009

**Indiana Department of Financial Institutions (“DFI”)
Mortgage Loan Originator Licensure**

Questions and Answers

1. Who must be licensed by the DFI as a Mortgage Loan Originator (“MLO”) and when is the license needed?

750 IAC 9-3-1 Licensing of mortgage loan originators

“... [A]fter June 30, 2010, an individual may not engage in the business of a mortgage loan originator without obtaining a mortgage loan originator license issued by the department under this article and annually maintaining the license.” This includes all MLOs employed by either a DFI mortgage lending licensee, or a lender exempt from licensing but registered with a unique identifier number with the Nationwide Mortgage Licensing System and Registry (“NMLSR”).

Note:

An individual acting exclusively as a servicer in loss mitigation on existing mortgages is not required to meet the education, testing, background, and licensing standards for an MLO until July 1, 2011 unless this extension of time is denied by the United States Department of Housing and Urban Development (“HUD”).

Loan processors or underwriters (as defined in 750 IAC 9-1-1(19)) who are W-2 employees of a mortgage lender are exempt from licensing as long as they do not perform qualifying MLO activities. An independent contractor who is a loan processor or underwriter may not engage in loan processor or underwriter activities for a mortgage lender unless the independent contractor obtains and maintains a license from the DFI and a unique identifier from NMLS.

An MLO employed by a mortgage broker licensed with the Indiana Secretary of State Securities Division will be licensed by that agency.

2. Are there any exemptions from licensing?

750 IAC 9-2-5 Exclusions

The exclusions are itemized in the article both as to companies and individuals.

750 IAC 9-2-6 Manufactured housing retailers

Unless HUD determined otherwise, this article does not apply to a manufactured housing retailer if the retailer only assists a consumer with a credit application and does not:

- Negotiate loan rates or terms,
- Provide any counseling about loan rates or terms: or
- Receive payment for assisting the consumer

This provision would allow a manufactured housing retailer to give customers general information about obtaining a direct loan from a third party. It would not allow a manufactured housing retailer to initiate retail installment sales contracts in the dealer's name as seller/creditor. It would also require licensing for MLO's who are employees of direct lenders in the manufactured housing business.

3. What are the qualifications for licensure?

750 IAC 9-3-2 Licensing qualifications

A license may not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of the applicant is such as to warrant belief that the mortgage loan originator will operate honestly and fairly within the purposes of this article. To verify standards are met applicant must provide:

- Criminal background checks, as described in section 3 of this rule;
- Credit histories as described in section 4 of this rule;
- Prelicensing education requirements as described in section 5 of this rule;
- Prelicensing written test requirements as described in section 6 of this rule;
- Surety bond requirements as described in section 7 of this rule;
- A review of licensure actions in this and other states; and
- Other background checks considered necessary by the director.

4. What is the process to get licensed?

750 IAC 9-3-1 Licensing of mortgage loan originators

Applicant must register with and maintain a unique identifier issued by NMLSR. This is the first step for all applicants and must be completed before scheduling education courses and testing, or submitting an application to DFI.

Except for independent contractor loan processors and underwriters, an applicant must be a W-2 employee of a mortgage lender licensed by DFI, or an entity exempt from licensing under IC 24-4.4 or IC 24-4.5, that is registered with NMLSR.

Applicant must apply for Indiana MLO license via NMLSR.

The director may designate NMLSR to collect and maintain records.

Note:

Definition of employee – an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of such employee.

5. How does an applicant provide a criminal background check?

750 IAC 9-3-3 Criminal background checks

“. . . [T]he director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested

under section 2(c) of this rule. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section.”

The actual practice will be for applicants to submit fingerprints as directed by NMLSR. This functionality will be in place on or about January 25, 2010.

6. What components of a credit check may be considered when determining if an individual has demonstrated financial responsibility?

750 IAC 9-3-4 Credit checks

The applicant pays any fees or costs associated with procuring the credit report.

Personal credit history will be submitted in a form prescribed by NMLSR.

Items considered to determine if an applicant has demonstrated financial responsibility include:

- Bankruptcies filed within the last ten (10) years;
- Current outstanding non-medical judgments;
- Current outstanding tax liens;
- Foreclosures within the past three (3) years; and
- A pattern of serious delinquent accounts within the past three (3) years

7. What are the prelicensing education requirements?

750 IAC 9-3-5 Prelicensing education requirements

A person shall complete at least twenty (20) hours of approved education, which must include at least the following:

- Three (3) hours of federal law and regulations;
- Three (3) hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and
- Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

All courses must be approved by and scheduled via NMLSR. Any applicant with their unique identifier can enroll in approved education classes.

8. How does an applicant meet the prelicensing test requirement?

750 IAC 9-3-6 Prelicensing testing

An individual must pass a qualified written test developed by the NMLSR and administered by a test provider approved by the NMLSR based upon reasonable standards. The test process has a national component and a state component.

Following are the standards for demonstrating minimum competence with respect to the testing requirement:

- (1) Passing Score - An individual does not pass a qualified written test unless the individual achieves a test score of at least seventy-five percent (75%) correct answers to questions.

- (2) Initial Retests - An individual may retake a test three (3) consecutive times with each consecutive test taken at least thirty (30) days after the preceding test.
- (3) Subsequent Retests - After failing three (3) consecutive tests, an individual must wait at least six (6) months before taking the test again.
- (4) Retest After Lapse Of License - A licensed mortgage loan originator who fails to maintain a valid license for a period of at least five (5) years must retake the test to be issued a new license, not taking into account any time during which the individual is a registered mortgage loan originator.

9. When will the prelicensing test be available?

Prelicensing testing has a national component and a state component. The national component is available now and any MLO with a unique identifier can sign-up for and take the national component. The state component will be available on February 22, 2010, and an appointment to take the test can be scheduled after January 21, 2010. The MLO will schedule both components of the test via NMLSR.

Note:

In Indiana, there will be a single state component test for MLO licensure that covers requirements of both DFI MLOs and Secretary of State MLOs.

10. What are the surety bond requirements

750 IAC 9-3-7 Surety bond

Each mortgage loan originator must be covered by a surety bond.

The mortgage loan originator may be covered by the bond of their employer. The minimum bond amount per lender is \$100,000, and is scalable based on the dollar amount of mortgage transactions originated as determined by the director. An MLO who is employed by a licensed or exempt mortgage lender will not have to provide a bond at time of initial licensing. Bonding will be covered by the company who employs the MLO at the time of the renewal due no later than December 31, 2010.

11. What are the Continuing Education requirements

750 IAC 9-3-10 Continuing education

To meet the annual continuing education requirements a licensed mortgage loan originator shall complete at least eight (8) hours of education approved in accordance with subsection (b), which must include at least the following:

- Three (3) hours of federal law and regulations;
- Two (2) hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and
- Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

This continuing education requirement will begin in 2011 for MLOs who are employed by mortgage companies licensed or exempt from licensing with DFI.



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Date: November 6, 2009

To: All First Lien Mortgage Licensees

Subject: Necessity of Compliance with IC 23-2-5-20, Loan Brokers

The Indiana Department of Financial Institutions (DFI) has learned that many First Lien Mortgage Lending (FLML) licensees, when acting as a loan broker, may be under the belief that by holding a FLML license they are not required to comply with IC 23-2-5, the Indiana Loan Brokers law. The DFI, as the regulator for FLML licensees, has been in discussions with the Indiana Secretary of State, Securities Division (“Division”) regarding this issue. The DFI and the Division have made a determination that certain provisions of the Indiana Loan Broker Act are applicable to FLML licensees with respect to transactions on which they perform the services of a loan broker. These services are described in IC 23-2-5-3(e). In particular, the DFI and the Commissioner have determined that the provisions included in IC 23-2-5-20 – Prohibited Acts, are applicable to FLML licensees who also conduct loan broker business. The introductory phrase contained in IC 23-2-5-20(a) extends beyond just those licensed as loan brokers to include those engaged in the services of a loan broker.

Please note that the DFI and the Division are working together to ensure that all appropriate laws apply to those engaged in the mortgage industry.

“IC 23-2-5-20 Prohibited Acts:

Sec. 20. (a) A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

- (1) Employ any device, scheme, or artifice to defraud.
- (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.

(3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

(4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a loan until the loan has been closed.

(5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.

(6) File or cause to be filed with a county recorder any document that the person knows:

(A) contains:

(i) a misstatement; or

(ii) an untrue statement;

of a material fact; or

(B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.

(7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is used in an activity authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:

(A) The personal information is:

(i) included on an application form or another form; or

(ii) transmitted as part of an application process or an enrollment process.

(B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.

(C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate

appraiser with respect to the value of any real estate offered as security for a residential mortgage loan, as prohibited by section 9.1(d) of this chapter.

(10) Violate any of the following:

(A) The federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

(B) The federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(C) The federal Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) Any other federal law or regulation concerning residential mortgage lending.

(b) A person who commits an act described in subsection (a) is subject to sections 10, 14, 15, and 16 of this chapter.”

This communication will also serve to advise FLML licensees that compliance with the above statute will be monitored at the time of examination. Violations prior to this advice will be noted, but will not be subject to remedial action due to prior conflicting interpretations of statutes. Continued violations will subject FLML licensees to corrective actions permitted by statute. These examinations may be cooperative efforts among the DFI and the Division. Examiner time for these examinations will be billed consistent with the FLML Act.

Should you have questions feel free to contact DFI at the address or phone number listed above.

Sincerely,

Mark B. Tarpey
Division Supervisor
Consumer Credit Division

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