



July 11, 2013

**To all Persons Engaged in the Mortgage Loan Business in Pennsylvania or With Pennsylvania Residents**

On behalf of the Commonwealth of Pennsylvania Department of Banking and Securities (the “Department”), I am pleased to announce that on July 2, 2013, Governor Corbett signed into law House Bill 1124 as Act 38 of 2013 (the “Act”), which amends the Mortgage Licensing Act (“MLA”), 7 Pa.C.S. § 6101 *et seq.*, to add provisions which closely track the language of the federal Consumer Financial Protection Bureau’s (“CFPB”) Regulation H, 12 CFR Part 1008. Regulation H in part addresses state implementation of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the “SAFE Act”), 12 U.S.C. § 5101 *et seq.* The Act also eliminates or reduces burdensome and outdated regulatory requirements on MLA licensees. The Act is effective on September 3, 2013.

As a matter of background, the SAFE Act requires each state to enact legislation that requires the licensing of individual mortgage originators consistent with the SAFE Act’s standards, including the mandatory use of the Nationwide Mortgage Licensing System (“NMLS”). States that do not enact such legislation risk losing the ability to regulate individual mortgage originators in favor of the CFPB. Following the implementation of the SAFE Act by the states, including Pennsylvania in 2009, the United States Department of Housing and Urban Development (“HUD”) issued a final regulation entitled “SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities” (76 FR 38464; June 30, 2011) (The “HUD Regulation”). This regulation represented HUD’s final interpretation of key elements of the SAFE Act. Almost immediately following the issuance of the HUD Regulation, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 transferred HUD’s authority over the SAFE Act to the CFPB. The CFPB subsequently reissued the HUD Regulation as CFPB Regulation H on December 19, 2011 (76 FR 78483).

Many state mortgage regulators, including the Department, determined that changes to their mortgage laws would be necessary in order to implement Regulation H. The Act reflects these needed changes to the MLA, as well as other provisions that eliminate or reduce burdensome regulatory requirements on MLA licensees.

**Amendments to Comply with Regulation H**

Since the promulgation of the HUD Regulation in June of 2011, the Department has consistently interpreted the provisions of the MLA in accordance with the HUD Regulation, as indicated in a letter under my signature dated October 6, 2011.<sup>1</sup> The primary purpose of the Act was to ensure

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<sup>1</sup> Available at [www.dobs.state.pa.us](http://www.dobs.state.pa.us), under the Legal/Secretary’s Letters/Mortgage Licensees tab.



that the MLA is compliant with now-Regulation H and to continue the existing interpretive consistency announced in the October 6, 2011, letter. To that end, wherever possible, the language used in Regulation H was adopted into the MLA. This allows the Department to interpret provisions of the MLA in accordance with any evolving interpretations of Regulation H by the CFPB and should alleviate any potential concerns that the Department will be applying the requirements of Regulation H inconsistently with the CFPB and other states.

Most of the changes to the MLA related to Regulation H may be found among the definitions section of the MLA (Section 6102). Most importantly, a “mortgage originator” is now defined as:

[a]n individual who, in a commercial context and habitually and repeatedly does any of the following:

- (i) Takes a mortgage loan application.
- (ii) Offers or negotiates terms of a mortgage loan for compensation or gain.
- (iii) Represents to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationary, brochures, signs, rate lists or other promotional items, that the individual can or will perform the activities described in subparagraphs (i) and (ii).

The term “mortgage loan” specifically includes “mortgage loan modifications” involving modifications of existing mortgage loans, and “lease-purchase agreements,” otherwise known as installment sales of dwellings or residential real estate. There are now 10 exceptions to the definition of “mortgage originator,” including individuals engaged in “clerical or support duties,” employees of government entities and employees of “bona fide nonprofit organizations.” While “bona fide non-profit organizations” and their employees are exempt from licensing under the MLA, such organizations must register with the Department and will be subject to periodic examinations by the Department (Section 6112(11)). Other definitions clarify the meanings of terms included in the modified definition of “mortgage originator,” such as “administrative or clerical tasks,” “application,” “bona fide nonprofit organization,” “commercial context,” “habitually and repeatedly,” “offer or negotiate terms of a mortgage loan for compensation or gain” and “take a mortgage application.”

Because the language of the MLA closely tracks that of Regulation H, the explanatory provisions of Regulation H may be used to interpret the MLA where applicable. For example, Appendix A to Regulation H provides clarification of what does and does not constitute activity that requires mortgage originator<sup>2</sup> licensing. Specifically, Appendix A addresses situations where an individual does or does not “take a mortgage application” or “offer or negotiate terms of a

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<sup>2</sup> The MLA uses the term “mortgage originator” instead of the HUD Regulation/Regulation H’s use of the term “loan originator” because Pennsylvania regulated individual mortgage originators before the mandatory regulation of such individuals as required by the SAFE Act.



mortgage loan for compensation or gain” for purposes of interpreting the MLA, each of which are activities that may trigger the mortgage originator licensing requirement under the MLA.

### **Other Amendments to the MLA**

Highlights of the other changes to the MLA as a result of the Act, many of which eliminate or reduce burdensome regulatory requirements for MLA licensees, include:

- Changes to the definition of “branch” allow more mortgage business to occur outside of licensed office locations (Section 6102). A related change expands the scope of what qualifies as an assigned location for mortgage originators, which can either be the mortgage originator’s residence licensed as a branch or a licensed office of a sponsoring licensee that is within 100 miles of the mortgage originator’s residence (Section 6131(f)(2)).
- Licensed mortgage originators no longer have to be employees of a licensee and can now be independent contractors, as long as they are sponsored by an entity in the NMLS (Sections 6111(a) and 6131(f)). Banking institutions and other exempt entities may sponsor independent contractor mortgage originators in the NMLS (Section 6112(1), (6), (13) and (14)).
- The return of a *de minimus* exception to licensing for persons who originate or negotiate three (3) or fewer mortgage loans in a calendar year, provided that such persons are not otherwise deemed to be engaged in the mortgage loan business by the Department (Section 6112(3)). Among other things, this restores the ability of individuals to finance the sale of their own residences without a mortgage originator license.
- The mandatory applicability of the minimum net worth for federal loan program approval has been eliminated so that only lenders using federal loan programs are required to have a higher net worth than \$250,000 (Section 6131(c)(1) and (3)).
- Clarifications regarding preclicensing and continuing education and testing: companies must designate a “qualifying individual” for education and testing purposes (Section 6131.1(b)(1), (c)(1) and (d)(1)), instead of the requirement for an owner to complete the education and testing; Pennsylvania has adopted the Uniform State Test for preclicensing education (Section 6131.1(c)(1)); and no continuing education is required in a year where an individual has completed the preclicensing education (Section 6131.1(d)(8)).
- Elimination of paper licenses and the requirement to display them, since license status can easily be checked on the NMLS (Section 6135(a)(1)).

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- Reduction in the required advertising language, so that licensees no longer must mention that they are licensed by the Department and only have to include their NMLS Unique Identifier on all advertisements (Section 6135(a)(5)).
- GAAP accounting records are only required for licensees that have minimum net worth requirements (Section 6135(b)).

## **Conclusion**

The Act incorporates many changes to the MLA as a result of Regulation H and also provides needed relief from outdated and unnecessary regulatory provisions. As such, the Act will allow Pennsylvania's mortgage industry to operate efficiently within the parameters of the SAFE Act as interpreted by the CFPB in Regulation H and continue to provide the citizens of the Commonwealth with quality mortgage financing.

This letter is not intended as and does not constitute legal advice. Please keep in mind that this letter contains generalizations regarding the Act discussed herein and is therefore not inclusive of all of its provisions, conditions, exceptions, and details. It is critically important for you to read the Act and seek guidance from your legal counsel and trade association regarding the effects of the Act on your business operations.

Questions regarding this letter should be addressed to the Compliance Division of the Bureau of Compliance, Investigation and Licensing at (717) 787-3717 or by submitting an inquiry via the Department's website at [www.dobs.state.pa.us](http://www.dobs.state.pa.us). We at the Department look forward to working with you in order to seamlessly implement the Act in Pennsylvania in the coming months.

Sincerely,

/s/ Glenn E. Moyer

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