



MARKET SQUARE PLAZA | 17 N SECOND STREET, SUITE 1300 | HARRISBURG, PA 17101  
Ph 717.787.2665 Fx 717.787.8773 w www.banking.state.pa.us

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**TO ALL PERSONS ENGAGED IN THE MORTGAGE LOAN BUSINESS IN PENNSYLVANIA  
OR WITH PENNSYLVANIA RESIDENTS:**

Today, Governor Edward G. Rendell signed into law as Act 31 of 2009, House Bill 1654 (P.N. 2448), which amends Pennsylvania's existing mortgage industry licensing law, 7 Pa.C.S. Chapter 61, in order to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act"), 12 U.S.C. § 5101 *et seq.* Act 31 was effective immediately.

The SAFE Act requires each state to enact legislation that regulates individual mortgage originators consistent with the SAFE Act's standards, including the mandatory use of the Nationwide Mortgage Licensing System and Registry ("NMLSR"). States that do not enact such legislation risk losing the ability to regulate individual mortgage originators in favor of the United States Department of Housing and Urban Development ("HUD"). While Pennsylvania already licenses individual mortgage originators and uses the NMLSR for licensing and regulatory purposes, the SAFE Act greatly expands the number of individuals who are required to be licensed as mortgage originators. The passage of Act 31 allows Pennsylvania to retain its authority to regulate individual mortgage originators operating in Pennsylvania or transacting with Pennsylvania residents.

The Conference of State Bank Supervisors ("CSBS") and American Association of Residential Mortgage Regulators ("AARMR") developed a model state law for use by the states in implementing the SAFE Act, which HUD, the primary administrator of the SAFE Act, has determined properly implements the SAFE Act. The amendments contained in Act 31 are based upon the CSBS/AARMR model state law and implement the SAFE Act by merging its requirements into the existing mortgage licensing law, 7 Pa.C.S. Chapter 61, now titled the Mortgage Licensing Act ("MLA").

Highlights of the SAFE Act requirements enacted in the MLA are explained in this letter. All section references are to the MLA unless otherwise noted. This letter contains generalizations regarding the MLA and is therefore not inclusive of all of its provisions, conditions, exceptions, and details. It is vitally important for you to familiarize yourself with the MLA itself and seek guidance from your legal counsel and trade association regarding the effects of this new legislation on your business operations.

**SAFE Act Requirements Enacted by the MLA**

*Definition of "mortgage loan"*

The SAFE Act's definition of "mortgage loan" is broad, and encompasses any mortgage, deed of trust, or other security interest on a dwelling or residential real estate. A "dwelling" is defined as "a

residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.” *See* Section 6102 (via 15 U.S.C. § 1602(v)). “Residential real estate is defined as “real property upon which is constructed or intended to be constructed a dwelling.” *See* Section 6102.

Because of these new definitions, the MLA now covers construction loans and loans that are secured by manufactured or mobile homes and non-owner occupied residential real estate. Loans made for business or commercial purposes remain outside the scope of the MLA.

#### *Definition of “mortgage originator”*

The SAFE Act’s definition of “mortgage originator,” when coupled with the new definition of “mortgage loan,” greatly expands the number of individuals engaged in the mortgage loan business who are required to be licensed as mortgage originators. A “mortgage originator” is now defined as “[a]n individual who takes a mortgage loan application or offers or negotiates terms of a mortgage loan for compensation or gain.” *See* Section 6102. As such, many individuals employed by entities that are currently exempt from licensing will now be required to be licensed as mortgage originators, such as employees of nonprofit corporations, depository institution affiliates and entities engaged in modifications of mortgage loans held or serviced by other entities.

The definition of “mortgage originator” does not include an individual who works solely as a “loan processor or underwriter” or who is solely involved in extensions of credit related to timeshare plans. *See* Section 6102. A “loan processor or underwriter” is defined as “[a]n 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 this chapter.” “Clerical or support duties” are defined as (1) the receipt, collection, distribution and analysis of information common for the processing or underwriting of a mortgage loan or (2) communicating with a consumer to obtain the information necessary for the processing or underwriting of a mortgage loan, to the extent that the communication does not include offering or negotiating mortgage loan rates or terms or counseling consumers about mortgage loan rates or terms. *See* Section 6102.

#### *License exceptions*

The SAFE Act permits very limited exceptions to mortgage originator licensing, which in the MLA are limited to attorneys at law, individuals making mortgage loans to the individual’s immediate family, individuals who are loan processors or underwriters and “registered mortgage loan originators.” *See* Section 6112(2), (3), (8) and (9). A “registered mortgage loan originator” is someone who meets the definition of a mortgage originator but who is an employee of a banking institution, credit union or subsidiary of a banking institution or credit union. *See* Section 6102. Registered mortgage loan originators will be required to register with the NMLSR consistent with regulations that will be promulgated by federal regulatory agencies. These proposed regulations may be found in the June 9, 2009, edition of the *Federal Register* (74 FR 27386).

Licensing exceptions remain for certain types of entities, such as affiliates of banking institutions and federal, state and local government agencies; however, their employees will generally have to become licensed as mortgage originators. In most cases, such entities will have the option to either maintain

bond coverage for their licensed mortgage originators and file an annual report via the NMLSR regarding the mortgage loan business conducted by the entity or provide evidence that the mortgage originators carry their own bonds. *See* Sections 6112(4)-(7), (11), (12); 6135(a)(5).

### *Surety bonds*

The SAFE Act requires that state mortgage originator licensing schemes provide for a net worth or surety bond requirement that reflects the dollar amount of mortgage loans originated by a mortgage originator or the establishment of a recovery fund paid for by mortgage originators. Consistent with the existing licensing scheme, Pennsylvania has opted to require surety bonds to cover mortgage originators.

Therefore, mortgage lender, mortgage loan correspondent and mortgage broker applicants and licensees are required to establish and maintain surety bond coverage for their mortgage originators, in addition to any existing bond requirements. *See* Section 6131(c)-(f). The amount of bond coverage will be based upon the dollar amount of mortgage loans secured by Pennsylvania residential real estate originated by mortgage originators in a calendar year, and may change from year to year. For mortgage lenders and mortgage loan correspondents, the amounts range from \$100,000-\$500,000; for mortgage brokers, \$50,000-\$150,000; and for mortgage originators \$25,000-\$150,000. Entities not required to be licensed but who employ individuals who are required to be licensed as mortgage originators will in most instances have the option to either provide bond coverage for their mortgage originators in the same manner as a mortgage lender or require their mortgage originators to obtain their own individual bonds.

### *Education and testing*

New Section 6131.1 of the MLA implements the SAFE Act's requirements for applicant and licensee education and testing. All education and testing will be approved and administered by the NMLSR, including Pennsylvania-specific education and testing.

A mortgage originator applicant, and at least one partner or ultimate equitable owner of 10% or more of a mortgage lender, mortgage loan correspondent or mortgage broker applicant must complete at least 20 hours of prelicensing education and pass a qualified written test in order to obtain a license under the MLA. The 20 hours of prelicensing education include 3 hours of federal law and regulations, 3 hours of ethics, 2 hours of lending standards for nontraditional (other than 30-year fixed rate) mortgage loans, 3 hours of Pennsylvania law and regulations and 9 hours of elective courses related to the mortgage industry. *See* Section 6131.1(b) and (c).

In order to renew a license, a mortgage originator licensee, and one individual from each licensed office of a mortgage broker, mortgage lender or mortgage loan correspondent that is not a mortgage originator, unless all of the nonclerical staff of a particular licensed office are licensed as mortgage originators, must complete 8 hours of continuing education, including 3 hours of federal law and regulations, 2 hours of ethics, 2 hours of lending standards for nontraditional (other than 30-year fixed rate) mortgage loans, and 1 hour of Pennsylvania law and regulations. *See* Section 6131.1(d).

### *Criminal background checks*

The Department's discretion to deny a license application under the MLA based upon criminal background or character and fitness remains generally the same for license applicants other than mortgage originators. However, the SAFE Act prohibits states from licensing mortgage originators who have certain criminal backgrounds and who do not possess acceptable character and financial responsibility. Section 6133(d) of the MLA implements the criminal background prohibitions, requiring that the Department deny a mortgage originator license application if the applicant has been convicted of any felony during the seven-year period preceding the date of the license application or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust or money laundering, unless the applicant has been pardoned for the conviction.

Section 6133(e.1) of the MLA implements the character and financial background requirements for mortgage originators, stating that the Department must deny a mortgage originator license application if the applicant has had a license issued by the Department or another state licensing agency or a federal regulatory agency revoked, unless such revocation is formally vacated, or if the applicant does not possess the financial responsibility, character, reputation, integrity and general fitness to command the confidence of the public and to warrant the belief that the mortgage loan business will be operated lawfully, honestly, fairly and within the legislative intent of the MLA and in accordance with the general laws of this Commonwealth. The factors that the Department may consider in making a determination regarding an applicant's financial responsibility include (i) current outstanding judgments, other than 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; and (iv) a pattern of seriously delinquent accounts within the past three years.

### *Sole proprietor license fees*

A provision has been made for sole proprietor mortgage lender, mortgage loan correspondent or mortgage broker licensees, who, because of the SAFE Act, must now also be licensed as mortgage originators. An individual who is licensed as both a mortgage originator and a mortgage lender, mortgage loan correspondent or mortgage broker is not required to pay the applicable mortgage originator license fee. *See* Section 6132(d).

## **Other Provisions of the MLA**

### *Fees chargeable by mortgage lenders*

The MLA clarifies the general lending authority for mortgage lenders in amended Section 6122(a) by indicating that mortgage lenders may charge interest, origination fees and delinquency charges on mortgage loans, subject only to limitations contained in the MLA. As is the case currently, the interest, origination fees and delinquency charges that mortgage lenders may charge on first mortgage loans under the MLA are not restricted, other than those restrictions that exist in other laws, such as the restriction on prepayment penalties under the Loan Interest and Protection Law ("LIPL"), 41 P.S. § 101 *et seq.*

The ability to make secondary mortgage loans under the MLA was also clarified to reflect that mortgage lenders making secondary mortgage loans under the MLA may charge interest of 1.85% per month, an origination (formerly application) fee of 3%, and delinquency charges of \$20 or 10% of the late payment, whichever is greater, for a payment that is more than 15 days late. *See* Section 6125(b)(2).

Finally, the ability of mortgage lenders to charge attorney fees related to mortgage loans was addressed. Specifically, Section 6122(a)(6) and (7) of the MLA clearly authorizes mortgage lenders to charge reasonable attorney fees of an attorney licensed in Pennsylvania related to:

- (1) the execution of a mortgage loan, if the fees (i) represent actual fees charged to the mortgage lender in connection with the mortgage loan; (ii) are evidenced by a statement for services rendered addressed to the mortgage lender; and (iii) are included in the principal of the mortgage loan; and
- (2) the collection of a delinquent mortgage loan and court costs incurred in the collection of the mortgage loan.

#### *Elimination of Pennsylvania office requirement*

The requirement for mortgage lender, mortgage loan correspondent and mortgage broker licensees to maintain at least one office in Pennsylvania has been eliminated. Records of a licensee may be stored at the licensee's principal place of business, wherever located, or at such other place with the prior permission of the Department. *See* Section 6135(a)(2).

#### **Transition Provisions**

Section 6131(a) of the MLA requires that applicants and licensees use the NMLSR in order to obtain and renew licenses. Mortgage originators must obtain a unique identifier from the NMLSR. Important information regarding the use of the NMLSR and the transition to the MLA can be found on the Department's website, [www.banking.state.pa.us](http://www.banking.state.pa.us), under the NMLS logo.

Act 31 provides that individuals not currently licensed as mortgage originators under 7 Pa.C.S. Ch. 61 who are now required to be licensed as mortgage originators by virtue of the MLA may continue to engage in the mortgage loan business in their current capacity provided that such individuals file an application for a mortgage originator license via the NMLSR by October 5, 2009.

For those individuals or entities currently licensed by the Department under 7 Pa.C.S. Ch. 61 whose licenses were conditioned upon completion of the education and testing requirements of 7 Pa.C.S. Ch. 61 existing prior to the effective date of Act 31, such licenses are now conditioned upon the completion of the education and testing requirements of the MLA by December 31, 2009. This means that all current mortgage originator licensees must complete 20 hours of prelicensing education and pass the required written test by December 31, 2009, or face possible license nonrenewal. Current mortgage originator licensees will not be required to complete continuing education for the calendar year 2009.

## Conclusion

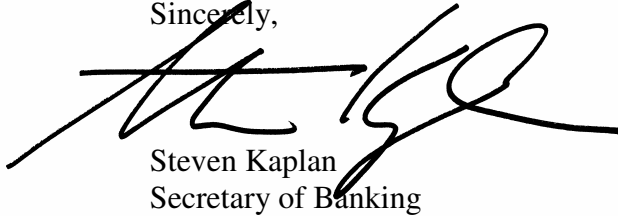
The implementation of the SAFE Act by the MLA creates significant change for entities engaged in the mortgage loan business in Pennsylvania or with Pennsylvania residents. The Department is committed to working with you to ensure the smoothest-possible transition to operation under the MLA. Please be sure to check the Department's website, [www.banking.state.pa.us](http://www.banking.state.pa.us), for updates.

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

Questions regarding this new law should be addressed to the Licensing 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.banking.state.pa.us](http://www.banking.state.pa.us).

We at the Department look forward to working with you in order to seamlessly implement this new and important legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'SK', is written over a horizontal line. The signature is fluid and cursive.

Steven Kaplan  
Secretary of Banking