



Statement of Kevin M. Cuff, Executive Director, Massachusetts Mortgage Bankers Association regarding the Massachusetts Division of Banks Public Hearing on Chapter 44 of the Acts of 2009 *An Act Adopting the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008*; and applicable Emergency Regulations to 209 CMR 41 and 209 CMR 42; and Proposed Amendments to the Regulatory Bulletin 5.2 – 101 RE: Surety Bond Requirements for a Mortgage Lender, Mortgage Broker and for Mortgage Loan Originator; and the Rescission of Regulatory Bulletin 5.1 – 105 RE: the Educational Requirements for the Mortgage Loan Originator.

Massachusetts Division of Banks One South Station
Fifth Floor Hearing Room
October 21, 2009

Commissioner Antonakes, Deputy Commissioner Cotney and the senior staff of the Massachusetts Division of Banks:

For the record, my name is Kevin M. Cuff and I am the Executive Director of the Massachusetts Mortgage Bankers Association, the state's mortgage trade association representing nearly 400 members made up of depository lenders, banks and credit unions, and non-depository independent mortgage companies, brokers as well as all affiliated industries that touch the mortgage transaction. Thank you for the opportunity this morning to testify in support of the Division's tremendous efforts in making the Massachusetts state mortgage loan originator licensing statute compliant with the new federal Secure and Fair Enforcement for Mortgage Licensing Act (SAFE) of 2008.

We do however, have a series of questions and we respectfully ask the Division to help the industry toward compliance by issuing some clarifying language to the following:

1. With regard to 209 CMR 41.00, *the Licensing of Mortgage Loan Originators*, under the definitions of a *Loan Processor and Loan Underwriter*; as well as some of the Answers to the FAQ's as posted by the Division and by the Office of Housing and Urban Development, there are still some degree of ambiguity of what the Division considers as an independent contractor (triggering the requirement of a Mortgage Loan Originator)?

Clearly, the MMBA believes that if the intention of a IRS Form W-2 underwriter or processor is to discuss mortgage rate and term with a consumer, then the position of underwriter or processor ought to be licensed hence complying with the NMLS and SAFE. But under the definitions of contracted underwriter or processor and through further clarifications from the DOB's and HUD's FAQ's of contracted underwriter or processor ~ we are clearly unsure of whether or not those positions ought to be licensed and in some instances would be impossible to be licensed.

For example and according to the HUD FAQ's: "*An individual is generally considered to be an employee only if the manner and means of his or her performance of duties is subject to the control of an employer, and if his or her income is reported on a W-2 form*".

Please clarify the definition of an independent contractor and how it applies to the outsourcing of contract services of an underwriter or processor. Hence:

- a.) If a temporary employment agency or consulting firm employs a contract underwriter or processor and pays the employee by an IRS Form W-2 and their services are contracted out to a lending institution, are they exempt from the licensing law?

b.) If a temporary employment agency or consulting firm employs a contract underwriter or processor and pays said employee by an IRS Form W-2 and their services are contracted out to a lending institution and the means of his or her performance is subject to the control of the lending institution and/or the employment agency, are they exempt by the licensing law?

c.) If a temporary employment agency or consulting firm pays a contract underwriter or processor by an IRS Form 1099 and their services are contracted out to a lending institution and the means of his or her performance is subject to the control of the lending institution and/or the employment agency, are they exempt by the licensing law?

2. Under the Exemption Provision of 209 CMR 41.00 ~ We are uncertain as to whether or not those loan officers working for an entity making fewer than 5 loans in a 12 month period are required to have a license. Is it the intention of the DOB under the new SAFE Act standard to require LOs of exempted entities to be licensed and if so, we might be curious as to how that might work?

For example: Often, our offices will receive telephone inquiries from out of state lenders trying to do a deal for their local customer's second home on the Cape or in the Berkshires. Let's say the originating entity is based in North Carolina and does not need to be licensed in the Commonwealth for this lone deal (5 loan rule exemption under MGL Ch. 255E), does their LO need to be a Massachusetts based broker with a Massachusetts based LO license?

3. Under the Rescission of Reg. Bulletin 5.1 – 105 the *Educational Requirement for Mortgage Loan Originators*:

Whereas the rescission for approvals of educational providers and courses by the Massachusetts DOB is to be ceded to the NMLS by November 1, 2009, it now appears that the NMLS will not be prepared to assume this duty until the first week of January 2010 as outlined in an email that we received from the NMLS dated October 20. May we respectfully ask that the DOB approved courses remain in effect until the NMLS is prepared to assume these duties following the first of the year?

In addition, under the educational requirements for the "grandfathered" loan officer group (those practicing LO's as of November of 2007), we remain unclear of the number of Continuing Education Credit requirements that the "grandfathered" loan officer needs to obtain? When did those requirements go into effect and, how many credits under what time period (year breakdown) does this group need to get in order to comply with the examination requirements and procedures?

May we suggest that there be changes to the DOB FAQ that will clarify how many CE requirements / hours are required for 2008, for 2009 and for 2010, which will make the "grandfathered" group eligible to sit for the exam?

4. In hindsight, the DOB might admit that the passing of MGL Ch. 255F and now the efforts to comply with the SAFE Act standard has created a transitional nightmare.

Just for the record, the MMBA will advise its members and active participants within the industry (particularly for the "grandfathered" loan originator) to ignore the acceptable CE credit standards in lieu of simply taking the approved 20 hour Residential Lending Course. This effort will assure that the LO is receiving the very best education and training to comply with the new industry standards and, it will best prepare the LO for the required examination.

5. As our last exercise of debate on issues involving the SAFE Act and the licensing of mortgage loan originators, please allow us a very brief moment of editorial comment about the overall educational requirement as a part of Ch. 255F and now the SAFE Act standard.

At the recent NEMBC Conference held in Providence, RI, we had the distinct pleasure of sharing a couple of days of opinion with representatives from the Community of State Bank Supervisors (CSBS). In the course of those discussions, it had become clear to us that any regulatory oversight efforts should encourage all mortgage loan originators regardless of their affiliation with a depository or non-depository institution to adopt a compliant culture within their every day professional standard. Today, too many opportunities place the depository mortgage

professional and the non-depository mortgage professional at odds. As the industry continues to evolve toward a deliberate and strict compliant culture, it is our overall belief that these two sectors of the industry need to work toward a closer professional standard.

Having said that, and for partial enlightened self interest, we would suggest that all professional training and education be conducted by organized professionals within the trade industry. We have heard of too many cases of out of state, on line or undocumented programs conducting insufficient programming that is either void of the appropriate information or providing incorrect information in their training. Selfishly, but through adequate documentation, we have developed tremendous confidence in the educational programming of organizations such as the New England Education Council, which is a subsidiary of the Massachusetts Mortgage Bankers Association. In ever-changing times like these, we believe that the quality of productive training is tantamount to the delivery of information transforming the entire industry into this compliant culture. The New England Education Council ought to be positioned as the preferred provider of the programming allowing Massachusetts mortgage professionals the responsibility to oversee, train and educate its own.

6. Finally, over the course of the past many years that we have discussed the licensing of mortgage loan originators, there have been divergent pathways for depository v. non-depository loan originators as well as for “grandfathered” v. “non-grandfathered” loan originators. At this critical time, have we not come to the point of trying to get ALL mortgage professionals on the pathway toward professionalism and compliance?

Understanding many of the professional pressures placed upon the industry and knowing the deficiencies in the lending systems which have contributed to the current lending and economic environment which we find ourselves, the MMBA would prefer that there be a unified system of licensing, training, education compliance and professionalism. We believe that the professional, the industry and the consumer would be better served uniting all of the strategies placed upon the divergent sectors of the industry.

Thank you for the opportunity for the Massachusetts Mortgage Bankers Association to provide you with comment and questions. If we can provide you with anything further, please do not hesitate to contact us.

The Massachusetts Mortgage Bankers Association (MMBA) is the Commonwealth's trade association representing the real estate finance industry. Founded in 1974, the MMBA is the largest mortgage association in New England and is one of the most successful in the country. The association works to ensure the continued strength of the Commonwealth's residential real estate markets; to expand homeownership prospects through affordability; and to extend access to affordable housing. The MMBA promotes fair and ethical lending practices and promotes excellence and integrity among real estate finance professionals through a wide range of educational programs, advocacy and industry-wide publication. Its membership of approximately 400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, insurance companies, appraisers, etc. and others in the mortgage lending field. For additional information, visit MMBA's Web site: www.massmba.com.