Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2012 Sunset Review: Licensing of Mortgage Loan Originators

October 15, 2012

Executive Director's Office
Barbara J. Kelley
Executive Director

John W. Hickenlooper
Governor

October 15, 2012

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Licensing of Mortgage Loan Originators. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2013 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

> The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...
>
> The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination….

The report discusses the question of whether there is a need for the regulation provided under Part 9 of Article 61 of Title 12, C.R.S. The report also discusses the effectiveness of the Division of Real Estate and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley
Executive Director

1560 Broadway, Suite 1550 Denver, Colorado 80202 Phone 303.894.7855
Fax 303.894.7885 Toll Free 800.866.7675 www.dora.state.co.us V/TDD 711

John W. Hickenlooper.
Governor

Barbara J. Kelley
Executive Director

2012 Sunset Review:
Colorado Licensing of Mortgage Loan Originators

Summary

What Is Regulated?
A mortgage loan originator helps borrowers obtain loans to buy residential real estate or to refinance existing loans. A mortgage company is engaged in the business of originating mortgage loans through its employees or independent contractors.

Why Is It Regulated?
The Mortgage Loan Originator Licensing and Mortgage Company Registration Act (Act) protects consumers by ensuring that mortgage loan originators meet the minimum standards established in the federal Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). It also protects consumers by ensuring that mortgage companies employ only licensed mortgage loan originators, maintain documents and records for four years, and employ fair advertising practices.

Who Is Regulated?
Colorado regulates approximately 4,113 mortgage loan originators and 811 mortgage companies.

How Is It Regulated?
Mortgage loan originators must be licensed by the Board of Mortgage Loan Originators (Board). In order to obtain a license, an applicant must register with the Nationwide Mortgage Licensing System and Registry (NMLS), submit a set of fingerprints, complete 20 hours of education, pass an examination, obtain a surety bond, and obtain errors and omissions insurance. Mortgage companies must register with NMLS. In order to register, a mortgage company must be in good standing with the Colorado Secretary of State and may not be legally barred from operating in Colorado.

What Does It Cost?
In fiscal year 10-11, the total expenditures to oversee the program were $1,077,839, and there were eight full-time employees associated with the program.

What Disciplinary Activity Is There?
Between fiscal years 06-07 and 10-11, the Board ordered 1,036 disciplinary actions including: revocations, suspensions, and probation, cease and desist orders, letters of admonition, license denials, public censures, stipulated agreements for diversion, and one injunction.

Key Recommendations

Continue the licensure of mortgage loan originators and the Board for five years, until 2017.
The federal government requires all states to license mortgage loan originators according to the standards established in the SAFE Act. The Consumer Financial Protection Bureau (CFPB) is the federal regulatory authority that oversees state licensure of mortgage loan originators. If the CFPB finds that a state is noncompliant with the SAFE Act, it has the authority take over the regulation of mortgage loan originators in that state. Regulation by the state is generally preferable to regulation by the federal government because it provides the state with more control over the regulatory program. A local regulator is also more accessible and responsive to the public and to the industry.

Amend the Act so that license disqualifiers for criminal convictions comply with the SAFE Act.
Under the SAFE Act, states are required to deny a license to applicants whose licenses have been revoked in other jurisdictions or who have a history of felony convictions. Because the Act's provisions regarding this issue are permissive rather than mandatory, the Act does not meet the minimum requirements for state licensure of mortgage loan originators as required by the SAFE Act.

Allow the Board to discipline or deny a license of a mortgage loan originator with a deferred judgment.
If a licensed mortgage loan originator pleads guilty to a crime and receives a deferred judgment, the Board may not take disciplinary action or deny a license based on the deferred judgment. If the Board finds a mortgage loan originator to be unsafe, then it should have the authority to remove him or her from the marketplace. Otherwise, public protection is compromised.

Major Contacts Made During This Review

Colorado Association of Mortgage Professionals
Colorado Association of Realtors
Colorado Board of Mortgage Loan Originators
Colorado Department of Law
Colorado Division of Real Estate
Colorado Division of Securities
Colorado Mortgage Lenders Association
National Association of Consumer Advocates

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.askdora.colorado.gov

Table of Contents

Background 1

Introduction *1*

Types of Regulation *2*

Sunset Process *4*

Methodology *4*

Profile of the Profession *4*

Legal Framework 6

History of Regulation *6*

Summary of Current Laws *7*

Program Description and Administration 21

Licensing *23*

Examinations *25*

Complaints/Disciplinary Actions *26*

Mortgage Company Registration *29*

Analysis and Recommendations 31

Recommendation 1 – Continue the Mortgage Loan Originator Licensing and Mortgage Company Registration Act for five years, until 2017. .... *31*

Recommendation 2 – Amend the Act so that license disqualifiers for criminal convictions comply with the SAFE Act. *34*

Recommendation 3 – Allow the Board to discipline or deny a license of a mortgage loan originator with a deferred judgment. *34*

Recommendation 4 – Repeal a provision that requires persons that are already exempted from the Act to comply with the Act. *36*

Recommendation 5 – Clarify the language in the Act to more clearly state that when a license is required by the Act, mortgage companies may only employ and act through licensed individuals. *37*

Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria[1] and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

[1] Criteria may be found at § 24-34-104, C.R.S.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.askdora.colorado.gov.

The regulatory functions of the Board of Mortgage Loan Originators (Board) and the Division of Real Estate (Division) as enumerated in Part 9 of Article 61 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2013, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the licensing of mortgage loan originators by the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of mortgage loan originators should be continued for the protection of the public and to evaluate the performance of the Board. During this review, the Board must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff attended Board meetings, interviewed Division staff, reviewed Division records and minutes including complaint and disciplinary actions, interviewed officials with state and national professional associations, interviewed mortgage loan originators, reviewed Colorado statutes and Board rules, and reviewed federal laws and the laws of other states.

Profile of the Profession

A mortgage loan originator helps borrowers obtain loans to buy residential or commercial real estate or to refinance an existing loan.[2]

[2] Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-2011 Edition.* Retrieved on October 20, 2011, from http://www.bls.gov/oco/ocos018.htm

Mortgage loan originators gather personal information to determine whether an applicant qualifies for a mortgage loan. They also explain different types of loans and the credit terms that are available and help to guide applicants through the process to obtain a loan. They may also offer advice to an applicant who may not qualify for a conventional loan. Once a potential borrower submits a loan application, a mortgage loan originator verifies the information provided in the application and analyzes the applicant's creditworthiness.[3] Mortgage loan originators may also negotiate loan terms and conditions between a borrower and a lender.

Mortgage loan originators work with managers, underwriters, and loan processors to complete the loan application process and to approve an applicant for a loan.

An underwriter performs an in-depth analysis of the applicant's creditworthiness,[4] and a loan processor prepares a loan application for the underwriter and is responsible for ensuring the loan application is complete, accurate, verified, and that it complies with company policy.[5]

Most mortgage loan originators are paid a commission based on the value of loans they originate although some may be paid a salary.[6]

Mortgage loan originators, who originate residential mortgage loans, are either federally registered or licensed by the states in which they originate mortgage loans.[7] Some states require a license to originate loans for commercial lending.

A mortgage loan originator may be employed by a lender such as a bank, a mortgage company, or a credit union. A mortgage company may be either a lender or a mortgage broker. A mortgage broker acts as a link between a borrower and a lender, arranging the transaction rather than lending the money directly.[8]

Nearly all states require mortgage companies and their branches to be licensed, and many states also regulate mortgage loan servicing. Colorado requires mortgage companies to register with the Nationwide Mortgage Licensing System and Registry.

---

[3] Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-2011 Edition.* Retrieved on October 20, 2011, from http://www.bls.gov/oco/ocos018.htm

[4] Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-2011 Edition.* Retrieved on October 20, 2011, from http://www.bls.gov/oco/ocos018.htm

[5] National Association of Mortgage Processors. *What Does a Mortgage Loan Processor Do?* Retrieved on August 10, 2011, from http://www.mortgageprocessor.org/mortgage-loan-processing/2006/11/what-does-mortgage-loan-processor-do.html

[6] Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-2011 Edition.* Retrieved on October 20, 2011, from http://www.bls.gov/oco/ocos018.htm

[7] NMLS Resource Center. *SAFE Mortgage Licensing Act of 2008.* Retrieved on August 28, 2012, from http://mortgage.nationwidelicensingsystem.org/SAFE/Pages/default.aspx

[8] U.S. Department of Housing and Urban Development. *Looking for the Best Mortgage: Shop, Compare, Negotiate.*

Legal Framework

History of Regulation

In 1994, a Department of Regulatory Agencies (DORA) sunrise review recommended the regulation of mortgage brokers and mortgage lenders. In 2005, DORA reported that fraud was a pervasive and growing problem in the mortgage industry and again recommended the regulation of mortgage brokers.

In 2006, the General Assembly enacted legislation to create a registration program for mortgage brokers. In order to register, mortgage brokers were required to pass a criminal history background check and post a bond of $25,000. The Director of the Division of Real Estate (Director) was required to deny, refuse to renew, or revoke the registration of any mortgage broker who had been convicted of a crime involving fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, or who had a registration revoked or suspended for similar reasons.

Over the next few years, the General Assembly amended the law several times. In 2007, it passed four bills regarding the regulation of mortgage brokers.

Senate Bill 07-203 (Senate Bill 203) changed the registration program to a licensure program. It required completion of a mortgage fundamentals course and passage of an examination, and it authorized the Director to establish continuing education requirements. It also expanded the disciplinary authority of the Director to impose fines, probation, and public censure, and it added to the grounds for discipline. Senate Bill 203 also required mortgage brokers to obtain errors and omissions (E&O) insurance and created a temporary license type.

House Bill 07-1322 held mortgage brokers to the duty of good faith and fair dealing with borrowers. It also prohibited mortgage brokers from charging a fee when the mortgage broker fails to secure a loan, and the bill required mortgage brokers to provide borrowers with a written disclosure in which all fees and costs are itemized. Additionally, it amended the requirement for the Director to deny, refuse to renew, or revoke the registration of a mortgage broker who had a registration revoked or suspended for fraud or for other similar acts by limiting it to the previous five years.

Senate Bill 07-216 prohibited acts defined as unconscionable, such as providing mortgage loans without regard to the borrower’s ability to repay the loan or engaging in loan flipping (refinancing an existing loan without any benefit to the borrower).

Senate Bill 07-085 prohibited mortgage brokers from influencing the independent judgment of appraisers by coercion, payment, or intimidation.

In 2009, the General Assembly amended the law to comply with the federal Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). For instance, it changed the name of the license type from a mortgage broker to a mortgage loan originator. It required state-licensed mortgage loan originators to register with the Nationwide Mortgage Licensing System and Registry (NMLS), and it also expanded the regulatory authority to include independent underwriters and processors; nonprofit organizations; and lending for mobile and manufactured housing.

In 2010, the General Assembly passed House Bill 10-1141, which, among other things, created the Colorado Board of Mortgage Loan Originators (Board) and required mortgage companies to register with NMLS.

In 2011, the General Assembly passed Senate Bill 11-206 to exempt certain noncommercial mortgage-related activities such as community development, public housing, and housing counseling.

Summary of Current Laws

Federal Regulation

The SAFE Act sets national standards for mortgage loan originators and requires states to create licensing programs that meet or exceed its standards. The Consumer Financial Protection Bureau (CFPB) is the federal agency that oversees state regulation of mortgage loan originators. If the CFPB finds that a state is noncompliant with minimum federal requirements, it has the authority to take over the licensure of mortgage loan originators in that state.[9]

Mortgage loan originators who work for an insured depository that is regulated by the CFPB or for an institution regulated by the Farm Credit Administration must be federally registered. All other mortgage loan originators are licensed by the states.[10]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) that was signed into law in 2010 amends several financial and consumer protection laws, such as the Equal Credit Opportunity Act, the Truth in Lending Act, the Real Estate Settlement Procedures Act, and the SAFE Act.[11]

[9] 12 U.S.C. § 5101 *et seq.*
[10] 12 U.S.C. §§ 5102 (8) and (12).
[11] 12 U.S.C. § 5301 *et seq.*

Mortgage loan originators are governed by several federal laws:

- The Truth in Lending Act requires disclosure of the cost of credit to the consumers and the terms of repayment;
- The Real Estate Settlement Procedures Act concerns closing costs and procedures and prohibits cost-increasing abusive practices such as kickbacks and referral fees and requires advance disclosure of settlement service costs;
- The Equal Credit Opportunity Act prohibits discrimination in lending and requires creditors to provide applicants, upon request, with the reasons underlying decisions to deny credit;
- Gramm-Leach-Bliley Act concerns privacy provisions related to consumer financial information;
- The Home Mortgage Disclosure Act requires lenders to report public loan data;
- The Federal Trade Commission (FTC) Act empowers the FTC to address unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce; and
- The Telemarketing and Consumer Fraud and Abuse Prevention Act prohibits deceptive telemarketing acts and practices.

State Regulation

The Mortgage Loan Originator Licensing and Mortgage Company Registration Act (Act) is housed in Part 9 of Article 61 of Title 12, Colorado Revised Statutes (C.R.S.).

A mortgage loan originator is defined as an individual who takes a residential mortgage loan application or who offers or negotiates the terms of a residential mortgage loan.[12]

However, a mortgage loan originator does not include:[13]

- A loan processor or underwriter;
- A real estate agent or salesperson;
- A person who extends credit for time share plans;
- A person who is collecting, receiving, or obtaining the right to collect or receive payments on behalf of a mortgage lender;[14] or
- A person who is engaged in the sale, leasing, or distribution of new manufactured homes.[15]

[12] § 12-61-902(6)(a), C.R.S.
[13] § 12-61-902(6)(b), C.R.S.
[14] § 12-61-902(10), C.R.S.
[15] § 24-32-3302, C.R.S.

A mortgage company takes residential loan applications or offers or negotiates the terms of a residential mortgage loan.[16]

A residential mortgage loan is defined as a loan that is primarily for personal, family, or household use and that is secured by a mortgage, deed of trust, or other equivalent, consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or fewer units.[17]

The Board regulates mortgage loan originators and mortgage companies.[18] The Board is vested with rulemaking, enforcement, and administrative authority, and it may delegate, in writing, specific enforcement and administrative authority to the Director.[19]

The five-member Board consists of three licensed mortgage loan originators and two members of the public who cannot be engaged in mortgage loan originating or lending. The Governor appoints Board members to four-year terms and may remove them for misconduct, incompetence, or neglect of duty.[20]

The Board is directed to maintain a system, such as a hotline or website, which enables consumers to file complaints easily.[21] Consumers may easily file a complaint from the Board's website, which is maintained by the Division. From the website, a consumer has the choice of filling out and submitting a form online, or printing a form that may be mailed or delivered to the Division.

Unless otherwise required by the federal CFPB and the U.S. Department of Housing and Urban Development (HUD), the Act exempts the following from its requirements:[22]

- A person or a company,[23] estate, or trust that provides mortgage financing for the sale of no more than three residential properties a year, as long as the properties are owned by such person or company, estate, or trust and serves as security for the loan;
- A bank and a savings association as defined in the "Federal Deposit Insurance Act," a subsidiary that is owned and controlled by a bank or savings association, employees of a bank or savings association, employees of a subsidiary that is owned and controlled by a bank or savings association, credit unions, and employees of credit unions;

[16] § 12-61-902(5), C.R.S.
[17] § 12-61-902(8), C.R.S.
[18] § 12-61-902.5(2)(b), C.R.S.
[19] § 12-61-902.5(2), C.R.S.
[20] § 12-61-902.5(1), C.R.S.
[21] § 12-61-905(9)(a), C.R.S.
[22] § 12-61-904(1), C.R.S.
[23] Section 12-61-902(7.5), C.R.S., defines a "person" as a natural person, corporation, company, limited liability company, partnership, firm, association, or other legal entity. For clarity, this summary will simply state "a person or a company" where appropriate.

- An attorney licensed in Colorado who renders services in the course of practice, and who is not primarily engaged in the business of negotiating residential mortgage loans;
- A loan processor or underwriter who is not an independent contractor and who does not represent to the public that he or she can or will perform any activities of a mortgage loan originator;
- To the extent that it is providing programs benefitting affordable housing, an agency of the federal government, the Colorado government, or any of Colorado's political subdivisions or employees of an agency of the federal government, of the Colorado government, or of any of Colorado's political subdivisions;
- Quasi-governmental agencies, housing counseling agencies approved by the HUD, or employees of quasi-government agencies or HUD-approved housing counseling agencies;
- Community development organizations or employees of community development organizations; and
- Self-help housing organizations or employees of self-help housing organizations or volunteers acting as an agent of self-help housing organizations.

Also exempted from the Act is a person or a company who:[24]

- Funds a residential mortgage loan that has been originated and processed by a licensed person or company, or by an exempt person or company;
- Does not solicit borrowers in Colorado for the purpose of making residential mortgage loans; and
- Does not participate in the negotiation of residential mortgage loans with the borrower, except for setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensed or exempt person or company.

Licensure

A mortgage loan originator must be licensed by the Board and registered with NMLS in order to originate a mortgage loan, offer to originate a mortgage loan, or act as a mortgage loan originator.[25]

[24] § 12-61-904(1), C.R.S.
[25] § 12-61-903(1), C.R.S.

An applicant for a license or renewal of a license must pay a fee and disclose any administrative discipline, and initial applicants must submit to a criminal history background check.[26] An applicant must also complete a mortgage fundamentals course approved by the Board and satisfactorily complete a written examination approved by the Board.[27]

An applicant is also required to register with NMLS and provide:[28]

- Fingerprints to be submitted to the Federal Bureau of Investigation; and
- Personal history and experience in a form prescribed by NMLS.

An applicant must authorize NMLS to obtain a credit report and information related to any administrative, criminal, or civil findings by any government jurisdiction.[29]

The Board has the authority to adopt reasonable rules to implement licensing requirements set in statute, and the Board may adopt any rules necessary to implement the federal SAFE Act[30] and to participate in NMLS.[31]

A mortgage loan originator is required to maintain a surety bond of $25,000.[32] A surety company is only required to pay on a claim when a court makes a final determination of fraud, forgery, criminal impersonation, or fraudulent representation.[33]

By rule, the Board allows mortgage loan originators who are employees of or exclusive agents of a company of fewer than 20 licensed mortgage loan originators to operate under a company's surety bond of $100,000. Mortgage loan originators who are employees of or exclusive agents of a company of 20 or more licensed mortgage loan originators may operate under a company's surety bond of $200,000.[34]

---

[26] §§ 12-61-903(2) and (4), C.R.S.
[27] § 12-61-903(3)(a), C.R.S.
[28] §§ 12-61-903(5.5)(a)(I) and (II), C.R.S.
[29] §§ 12-61-903(5.5)(a)(II)(A) and (B), C.R.S.
[30] § 12 U.S.C. sec. 5101 *et seq.*
[31] § 12-61-903(10), C.R.S.
[32] § 12-61-907(1), C.R.S.
[33] § 12-61-907(2), C.R.S.
[34] 4 CCR 725-3 Rule 1-2-2 Surety Bond Requirements for Mortgage Loan Originators.

By rule, a mortgage loan originator must maintain E&O insurance with the following terms:[35]

- The contract and policy are in conformance with all relevant Colorado statutory requirements;
- Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;
- Coverage includes all types of transactions conducted by the mortgage loan originator and is in the individual mortgage loan originator's name;
- Coverage is for not less than $100,000 per claim, with an annual aggregate limit of not less than $300,000; and
- Coverage contains a deductible no greater than $1,000, or a deductible no greater than $20,000 for policies that primarily insure reverse mortgage transactions.

A mortgage loan originator who is an employee or exclusive agent of a company is required by rule to have E&O insurance with terms similar to an individual mortgage loan originator. However, he or she may operate under the company's E&O insurance. For a company with fewer than 20 employees, coverage must be $1 million per claim and $2 million for all claims in a year, exclusive to Colorado consumers, and a deductible may be no greater than $50,000. For a company with more than 20 employees, coverage must be at least $1 million per claim and $4 million for all claims in a year, exclusive to Colorado consumers, and a deductible may be no greater than $100,000.[36]

The Board must issue or deny a license 60 days after:[37]

- The applicant has submitted all the required information, fee, proof of obtaining a surety bond, and proof of E&O insurance; and
- The Board receives the results of the criminal history record check and all other relevant information or documents pertaining to the applicant's criminal history.

The Board must adopt rules for continuing education, of which at least eight hours must be required.[38] The Board requires mortgage loan originators to annually complete eight hours of NMLS-approved continuing education and a two-hour Colorado-specific annual update course approved by the Division of Real Estate (Division).[39]

[35] 4 CCR 725-3 Rule 1-3-1 Errors and Omissions Insurance for Mortgage Loan Originators.
[36] 4 CCR 725-3 Rule 1-3-1 Errors and Omissions Insurance for Mortgage Loan Originators.
[37] § 12-61-903(7), C.R.S.
[38] § 12-61-903(8)(b), C.R.S.
[39] 4 CCR 725-3 Rule 1-4-1 Licensing, Education, Examination and Continuing Education Requirements.

Mortgage loan originators and mortgage companies are required to clearly provide their license numbers on all residential mortgage loan applications and any other documents required by the Board.[40]

A mortgage loan originator may act as both the real estate agent and a mortgage loan originator in the same transaction as long as he or she makes a full and fair disclosure to the borrower of all the material features of the loan and all facts material to the transaction, and he or she maintains business records separate and apart from the real estate agent activities.[41]

Disclosures

A mortgage loan originator must have a written agreement with a lender before soliciting or contracting with the public.[42]

Within three business days after receiving a loan application or any funds from a borrower, a mortgage loan originator must provide a written disclosure to the borrower that itemizes and explains any fees and costs related to the residential mortgage loan and that specifies any fees that benefit the mortgage loan originator. If the exact amounts cannot be determined, then a good-faith estimate is required.[43]

In addition to disclosing any fees and costs associated with the residential mortgage loan, the written disclosure must contain:

- A statement disclosing that if the borrower is unable to obtain a loan, the mortgage loan originator must provide copies of each appraisal, title report, and credit report paid for by the borrower to any mortgage loan originator or lender as requested by the borrower;[44]
- A statement disclosing that any funds paid by the borrower for third-party services will be held in a trust account and that any funds remaining in the account after the third party has been paid will be returned to the borrower;[45] and
- Any lock-in[46] fees that are refundable to the borrower.[47]

[40] § 12-61-918, C.R.S.
[41] § 12-61-912(1)(a), C.R.S.
[42] § 12-61-913(2), C.R.S.
[43] § 12-61-914(1), C.R.S.
[44] § 12-61-914(2)(e), C.R.S.
[45] § 12-61-914(2)(g), C.R.S.
[46] Lock-In: A lender's agreement to honor a particular interest rate for a specified period of time while the loan application is processed. The Federal Reserve Board. *A Consumer's Guide to Mortgage Lock-Ins.* Retrieved November 15, 2011, from http://www.federalreserve.gov/pubs/lockins/default.htm
[47] § 12-61-914(2)(f), C.R.S.

A mortgage loan originator may not receive any fee, commission, or compensation for a residential mortgage loan unless the borrower obtains a loan according to the terms and conditions agreed to in the contract.[48] However, a mortgage loan originator may charge a fee, not exceeding $300, if the mortgage loan originator obtains a residential mortgage loan and the borrower fails to close on it through no fault of the mortgage loan originator.[49]

Any fee for goods and services from a third party that is not provided must be returned to the borrower. The mortgage loan originator may not charge more for goods and services than what is actually charged by a third party.[50]

Disciplinary Authority

The Board may deny, revoke, or refuse to renew a license of a mortgage loan originator who has:[51]

- Filed an application with the Board containing material misstatements of fact or omitted any disclosure required by the Act;
- Within the seven years immediately preceding the date of application, been convicted of, or pled guilty or *nolo contendere* to, a felony;
- At any time, been convicted of, or pled guilty or *nolo contendere* to, a felony that involved an act of fraud, dishonesty, breach of trust, or money laundering;
- Been enjoined, within the last five years, from engaging in deceptive conduct related to brokering or originating a mortgage loan;
- Unlawfully influenced a real estate appraisal; or
- Not demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently, consistent with the purposes of the Act.

[48] § 12-61-915(1), C.R.S.
[49] § 12-61-915(2), C.R.S.
[50] § 12-61-915(3), C.R.S.
[51] § 12-61-905(1), C.R.S.

The Board may also deny, revoke, or refuse to renew a license of a mortgage loan originator who has, within the last five years, had a license, registration, or certification in Colorado or in any other state revoked or suspended for fraud, deceit, material misrepresentation, theft, or breach of fiduciary duty while practicing as a:[52]

- Mortgage broker or mortgage loan originator;
- Real estate broker or salesperson;
- Real estate appraiser;
- Insurance producer;
- Attorney;
- Securities broker-dealer;
- Securities sales representative; or
- Investment advisor or an investment advisor representative.

The Act prohibits mortgage loan originators from engaging in the following conduct, which is also grounds for denial, revocation, and refusal to renew a license:[53]

- Defrauding or misleading borrowers or lenders, or defrauding any person;
- Engaging in unfair or deceptive practice;
- Obtaining property by fraud or misrepresentation;
- Soliciting or entering into a contract for a fee whether or not a loan is obtained;
- Soliciting, advertising, or entering into a contract for a specific interest rate, points, or other financing terms that are not actually available from a lender;
- Failing to make disclosures required by State and federal law;
- Making a false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a loan;
- Engaging in "bait and switch"[54] advertising;
- Negligently making any false statement or knowingly and willfully making any omission of material fact in connection with any reports filed by the mortgage loan originator or in connection with any investigation conducted by the Division;
- Advertising any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest;
- Failing to pay a third-party provider, no later than 30 days after the recording of the loan closing documents or 90 days after completion of the third-party service, whichever comes first;

[52] § 12-61-905(1)(c), C.R.S.
[53] §§12-61-905(1)(f) and 12-61-911, C.R.S.
[54] Bait and switch: Advertising a product at a low price when it is not available for sale in order to entice customers to buy a more expensive product.

- Collecting, charging, attempting to collect or charge any prohibited fee; and
- Failing to comply with the Act or any Board rule.

Any person, estate, or trust that provides mortgage financing for the sale of no more than three properties a year, each of which is owned by the person, estate, or trust, is exempt from the Act, but is still prohibited from engaging in the above conduct.

Further, mortgage loan originators licensed by the Board and anyone exempted from the Act are prohibited from violating federal laws enumerated in the Act and any related rules, and the Board may deny, revoke, or refuse to renew the license of a mortgage loan originator for doing so.[55]

The Board also has the authority to adopt rules requiring mortgage loan originators to comply with other applicable federal statutes and regulations.[56]

The Board may inactivate a state license or registration with NMLS for failure to:[57]

- Maintain a surety bond;
- Maintain E&O insurance;
- Maintain current contact information, surety bond information, or E&O insurance information;
- Respond to an investigation or examination;
- Comply with education and testing requirements; or
- Register with NMLS.

The Board has the authority to take any of the following disciplinary actions against mortgage loan originators:[58]

- Deny a license;
- Censure a license;
- Impose probation:
- Impose a fine;
- Order restitution;
- Order payment of actual damages;
- Suspend a license; or
- Revoke a license.

When a complaint or an investigation reveals misconduct that does not warrant formal action but should not be dismissed without merit, the Board may issue a letter of admonition.[59]

---

[55] §§ 12-61-905(1)(f) and 12-61-911(1)(j), C.R.S.
[56] § 12-61-911(1)(j), C.R.S.
[57] § 12-61-903.3(1), C.R.S.
[58] § 12-61-905.5(1), C.R.S.
[59] § 12-61-905.5(6), C.R.S.

The grounds for discipline for mortgage loan originators include, among others:[60]

- Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;
- Knowingly misrepresenting or making false promises through agents, salespersons, advertising, or otherwise;
- Violating any provision of the Colorado Consumer Protection Act;
- Failing to account for or to remit, within a reasonable time, any moneys belonging to others;
- Converting or diverting funds of others without proper authorization, commingling funds of others with the licensee's own funds;
- Disregarding or violating any provision of the Act or any rule adopted by the Board;
- Violating any lawful orders of the Board;
- Aiding and abetting a violation of any rule, order of the Board, or provision of the Act;
- Conviction of, entering a plea of guilty to, or entering a plea of *nolo contendere* to crimes against a person, crimes against property, or racketeering, or any other similar crime under Colorado law, federal law, or the laws of other states;
- Violating or aiding and abetting the violation of Colorado or federal fair housing laws;
- Demonstrating unworthiness or incompetency as a mortgage loan originator by conducting business in such a manner as to endanger the interest of the public;
- Engaging in fraud, misrepresentation, deceit, or conversion of trust funds that results in the payment of any claim pursuant to the Act or that results in the entry of a civil judgment for damages;
- Engaging in any other conduct that reveals a lack of good faith and fair dealing; and
- Having a mortgage loan originator's license suspended or revoked in any jurisdiction or having any disciplinary action taken against the mortgage loan originator in any other jurisdiction.

Until July 1, 2013, all complaints and investigative files are closed to public inspection until notice of hearing and charges are served on the licensee, except by court order. Complaints that are dismissed are closed to public inspection, except by court order.

[60] § 12-61-905.5, C.R.S.

Effective July 1, 2013, all complaints and investigative files will be closed to public inspection. Only stipulated agreements and final agency orders will be public record.[61]

The Board may not consider an application for a license from someone whose license has been revoked until two years have lapsed.[62] The Board may not grant a new license or reinstate a license if the license was suspended or revoked because of conduct that resulted in financial loss to another person until the individual seeking a license has made full restitution, including interest, and paid reasonable legal fees.[63]

If the Board or the Division uncovers information that falls within the jurisdiction of a criminal justice or other law enforcement authority, it must provide that information, and any relevant documents and materials, to the appropriate authority for investigation and prosecution.[64]

The Board is authorized to conduct disciplinary hearings,[65] and it has investigative subpoena authority and may seek injunction against anyone violating the Act.[66]

Deceptive Trade Practices

A mortgage loan originator must abide by the duty of good faith and fair dealings in all communications and transactions with the borrower, such as:[67]

- Not recommending or inducing the borrower to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, considering all of the circumstances, including the terms of a loan, the cost of a loan, and the borrower's circumstances; and
- Making a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other relevant information, and taking this information into consideration when recommending, brokering, or originating a loan.

Any violation of the mortgage loan originator’s duty to the borrower as outlined above or in section 38-40-105, C.R.S., constitutes a deceptive trade practice under the Consumer Protection Act, Article 1 of Title 6, C.R.S.

[61] § 12-61-905.5(5), C.R.S.
[62] § 12-61-905.5(8)(a), C.R.S.
[63] § 12-61-905.5(8)(b), C.R.S.
[64] § 12-61-905.5(9), C.R.S.
[65] § 12-61-905(4), C.R.S.
[66] §§ 12-61-905(6) and (7), C.R.S.
[67] § 12-61-904.5(1), C.R.S.

Section 38-40-105, C.R.S., prohibits:

- Knowingly advertising, in any manner, any false, misleading, or deceptive statement regarding rates, terms, or conditions for a mortgage loan;
- Making a false promise or misrepresentation or concealing an essential or material fact to entice either a borrower or a creditor to enter into a mortgage agreement when the mortgage loan originator knew or reasonably should have known of such falsity, misrepresentation, or concealment;
- Knowingly, and with intent to defraud, presenting any written statement or information in support of an application for a mortgage loan that contains false information or conceals information concerning any material fact; or
- Facilitating the consummation of a mortgage loan agreement that is unconscionable given the terms and circumstances of the transaction.

Section 38-40-105(1.7), C.R.S., also prohibits the following acts or practices, which are deemed unconscionable:

- Providing residential mortgage loans to consumers based predominantly on acquisition of the foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay a loan;
- Knowingly or intentionally making a residential mortgage loan that refinances an existing residential mortgage loan when the new loan does not have reasonable, tangible net benefit to the consumer considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the consumer's circumstances; or
- Entering into a residential mortgage loan transaction knowing there was no reasonable probability of payment of the obligation by the consumer.

Criminal Violations

The Attorney General and the district attorneys of the state share jurisdiction to investigate and prosecute criminal violations of the Act.[68]

Anyone who acts as a mortgage loan originator in Colorado without a license is guilty of a Class 1 misdemeanor. Each mortgage loan negotiated or offered to be negotiated is a separate violation.[69] A Class 1 misdemeanor is punishable by 6 to 18 months imprisonment or a fine of $500 to $5,000, or both.[70]

[68] § 12-61-909, C.R.S.
[69] §§ 12-61-910(1)(a) and (b), C.R.S.
[70] § 18-1.3-501(1)(a), C.R.S.

Mortgage Company Registration

A mortgage company must register with NMLS, unless exempted by Board rule, and renew its registration annually.[71]

The Board is vested with the authority to deny, refuse to renew, suspend, or revoke the registration of a mortgage loan company; issue cease and desist orders; and impose fines for any of the following acts by a mortgage company:[72]

- Acting without a license or registration;
- Failing to maintain, for four years, documents or records required by the Board, or to produce them for inspection by the Board;
- Employing or acting through individuals subject to its control who are unlicensed at the time of hire and not in the process of becoming licensed who are required to be licensed according to the Act, or if the mortgage company, after notice, continues to employ or act through individuals subject to its control whose required licenses are not valid;
- Making a false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan;
- Engaging in bait and switch advertising; or
- Violating any rule of the Board that addresses advertising requirements.

The Board may fine a mortgage company according to the following schedule:[73]

- $1,000 or less per act or occurrence in the first administrative proceeding; and
- $2,000 or less per act or occurrence in any subsequent administrative proceedings.

[71] § 12-61-903.1(1)(a), C.R.S.
[72] § 12-61-905.1(1), C.R.S.
[73] § 12-61-905.1(2)(b), C.R.S.

Program Description and Administration

The Colorado Board of Mortgage Loan Originators (Board) is vested with the authority to regulate mortgage loan originators and mortgage companies in Colorado. The five-member Board meets bimonthly to approve licenses, review complaints, take disciplinary action, adopt rules, and make policy decisions.

The licensure of mortgage loan originators began in August 2006, so the period under review includes the entire life of the program.

The Board is housed in the Department of Regulatory Agencies (DORA), Division of Real Estate (Division), which performs the operational and administrative functions of the Board. Table 1 shows the Board expenditures and full-time equivalent (FTE) employees over the fiscal years indicated.

Table 1
Agency Fiscal Information

Fiscal Year	Total Program Expenditure	FTE
06-07	$88,469	1.8
07-08	$785,112	6.3
08-09	$1,017,337	8.0
09-10	$1,234,304	8.0
10-11	$1,077,839	8.0

Initially, the program simply required mortgage loan originators to register with the Division, a regulatory program that was inexpensive and required very little staffing. In 2007, a licensure program was created, which required an increase in staff and resources. By 2009, the program was fully staffed.

The higher program expenditures in fiscal year 09-10 were primarily due to an increase in complaint, investigative, and disciplinary activity, leading to higher legal fees.

In 2011, staff restructured the Division. The restructure of the Division is intended to streamline its operations and to make regulation across all license types more consistent.

The Board is cash funded by the licensing fees it collects from mortgage loan originators and mortgage companies.

In addition to licensing fees, mortgage loan originators must also pay fees to register with the Nationwide Mortgage Licensing System and Registry (NMLS), to obtain criminal background checks with the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI), and to provide a credit report.

Table 2 includes the licensing fees for mortgage loan originators in fiscal year 11-12.

Table 2
Mortgage Loan Originator Licensing Fees
Fiscal Year 11-12

Fee Type	Amount
Initial Licensing Fee	$85
Renewal Fee	$50
Reinstatement Fee	$75
Reactivation Fee	$100
NMLS Registration Fee	$30
CBI Criminal Background Check	$40
FBI Criminal Background Check	$39-$49*
Credit Report	$15

*The cost depends on the service provider.

In order to be state licensed, a mortgage loan originator must register with NMLS. NMLS is a database and not a regulatory body. It has a website where the public can check to see if a mortgage loan originator has a national registration and a state license. It is also a nationwide clearinghouse for any disciplinary activity. At this time, anyone may obtain a registration number with NMLS regardless of whether they have been approved for a state license.

Table 3 shows the registration fees for mortgage companies in fiscal year 11-12.

Table 3
Mortgage Company Registration Fees
Fiscal Year 11-12

Fee Type	Amount
Registration Fee	$165
Renewal Fee	$100
Reinstatement Fee	$150
Reactivation Fee	$150

The registration fee for mortgage companies was $600 in fiscal year 10-11, the first year of the program. It was much higher than in the following year because creating a new regulatory program is costly. Once the program was created, the fees were lowered according to the cost of maintaining the existing program.

Licensing

In the United States, with some exceptions, it is illegal to originate a residential mortgage loan without a state license or a national registration.

To obtain a license as a mortgage loan originator in Colorado, an applicant must complete the following steps:

- Register with NMLS;
- Submit a set of fingerprints to NMLS;
- Complete 20 hours of education;
- Pass the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) Mortgage Loan Originator Test;
- Obtain a surety bond in the amount of $25,000;
- Obtain errors and omissions (E&O) insurance of at least $100,000 per claim and $300,000 for all claims in a year;
- Submit a set of fingerprints to the CBI;
- Submit an application and the required documentation and fee to the Division through an online database.

If the application is without issues, a license is automatically approved and issued. Applications that are incomplete are kept on file. If the application is incomplete for a significant length of time, it is discarded and an applicant must submit a new application, the required documentation, and pay the fee again.

The SAFE Act requires states to determine whether an applicant has demonstrated financial responsibility. When applicants register with NMLS, they authorize a credit report to be produced. However, the Board does not review the credit report for licensing purposes because it does not consider a credit history to be a fair measure of financial responsibility. Instead, an applicant demonstrates financial responsibility to the Board by holding a surety bond and E&O insurance.

If the applicant has a criminal history, an investigator will review the history. If there are any concerns, the investigator will send a letter requesting additional information, and, if necessary, a report will be provided to the Board for consideration.

Table 4 shows the licensing activity for mortgage loan originators over the five years under review.

Table 4
Mortgage Loan Originator
Licenses

Fiscal Year	New Licenses	Renewals	Reinstatements	Current
06-07	6,101	0	0	4,532
07-08	4,099	0	0	9,249
08-09	596	0	0	8,607
09-10	685	963	79	8,895
10-11	1,756	3,740	321	4,113

In fiscal year 10-11, the total number of currently licensed mortgage loan originators dropped 53 percent from the previous year. In order to comply with the SAFE Act, licensed mortgage loan originators were required to complete specific education and pass an examination by January 1, 2009. In August 2009, approximately 4,600 licensees who did not comply with these requirements were inactivated for not taking or passing the examination.

According to staff, the mortgage loan originator licensing numbers are consistent with the contraction in the real estate market. When the real estate market collapsed, fewer mortgage loan originators applied for a license or complied with the new requirements for a license.

Mortgage loan originators must renew their licenses by December 31 every year. They may renew online starting November 1. No grace period is in place for mortgage loan originators. If they fail to renew by December 31, their license expires and they are required to reinstate it. If they fail to renew by the last day of February, then they must apply for a new license.

To renew a license, mortgage loan originators are required to complete, each year, 10 hours of continuing education, which includes a two-hour course that reviews any updates to state law.

When the Division receives a complaint against a mortgage loan originator, Division staff ensures compliance with E&O insurance and surety bond requirements. Division staff also audits compliance with the two-hour annual update course. Division staff do not audit the additional eight hours of continuing education required by the SAFE Act since mortgage loan originators cannot renew registration with NMLS if they do not complete it.

Examinations

To be licensed in Colorado, mortgage loan originators are required to pass the SAFE Mortgage Loan Originator Test developed by NMLS. The examination includes both national and state components, and the SAFE Act requires candidates for state licensure to obtain a score of at least 75 percent on each component.[74]

The national component tests knowledge of:[75]

- Federal mortgage-related laws;
- General mortgage knowledge;
- Mortgage loan origination activities; and
- Ethics.

The state component in Colorado tests knowledge of:[76]

- Division and Board responsibilities and limitations;
- Definitions in Colorado law;
- Colorado licensing law;
- Compliance with Colorado law; and
- Disciplinary action.

The national component consists of 90 scored questions and 10 additional questions that are not scored. The time allowed to complete the national component is 150 minutes.[77] In Colorado, the state component consists of 50 scored questions and 10 additional questions that are not scored. The time allowed to complete the state component is 90 minutes.[78]

The examination costs $92 for the national component and $69 for each state component.[79]

[74] *The Mortgage Loan Originator Testing Handbook*, Nationwide Mortgage Licensing System and Registry (2011), p 3.
[75] NMLS Resource Center. *SAFE Mortgage Loan Originator Test – National Component.* Retrieved on December 28, 2011, from http://mortgage.nationwidelicensingsystem.org/profreq/testing/Content%20Outlines/National%20SAFE%20Mortgage%20LO%20Test%20Content%20Outline.pdf
[76] NMLS Resource Center. *SAFE Mortgage Loan Originator Test – State Component.* Retrieved on December 28, 2011, from http://mortgage.nationwidelicensingsystem.org/profreq/testing/Content%20Outlines/CO%20State%20Content%20Outline.pdf
[77] *The Mortgage Loan Originator Testing Handbook*, Nationwide Mortgage Licensing System and Registry (2011), p 4.
[78] *SAFE Mortgage Loan Originator Test – State Component; Colorado Content Outline,* Nationwide Mortgage Licensing System and Registry (2010), p. 1.
[79] NMLS Resource Center. *Testing.* Retrieved December 28, 2011, from http://mortgage.nationwidelicensingsystem.org/profreq/testing/Pages/default.aspx

Examinations are administered throughout the year at either Pearson Professional Centers or Prometric Testing Centers, depending on the location, in Colorado Springs, Englewood, Grand Junction, Greeley, Greenwood Village, Longmont, Pueblo, Westminster, and Wheat Ridge.[80]

Originally, mortgage brokers were only required to register with the Division and were not required to pass an examination. From 2008 to 2010, candidates were required to pass the Mortgage Lending Basics (ML Basics) examination and the State and Federal Regulations for Mortgage Lending (SFR) examination.

Table 5 shows the number of examinations and pass rates for each of these examinations.

Table 5
Mortgage Loan Originator
Examinations

Fiscal Year	ML Basics Exams	ML Basics Pass Rate	SFR Exams	SFR Pass Rate	SAFE Act Exams	SAFE Act Pass Rate
06-07	N/A	N/A	N/A	N/A	N/A	N/A
07-08	141	99%	146	93%	N/A	N/A
08-09	4,746	97%	5,732	79%	N/A	N/A
09-10	713	92%	996	61%	N/A	N/A
10-11	N/A	N/A	N/A	N/A	2,600	81%

The SAFE Mortgage Loan Originator Test has only been available since December 31, 2010, so pass rates for that test are only reported for fiscal year 10-11.

Complaints/Disciplinary Actions

The Board takes complaints from any person or entity such as borrowers and real estate professionals. The Board may also initiate a complaint on its own motion. The Board may take the appropriate disciplinary action if it determines that a licensee has violated Part 9 of Article 61 of Title 12, Colorado Revised Statutes (C.R.S.), or the Board's rules.

[80] NMLS Resource Center. *Center Locations.* Retrieved August 28, 2012, from http://publish.nationwidelicensingsystem.org/profreq/Pages/CenterLocations.aspx?state=CO

Table 6 shows the types and number of complaints received by the Board over a five-year period.

Table 6
Mortgage Loan Originators
Complaints

Complaint Types	06-07	07-08	08-09	09-10	10-11
Advertising	0	19	34	34	43
Coercion of Appraiser	1	1	4	3	0
Failure to Provide Disclosure	0	2	0	2	1
False Application	3	3	0	0	1
Fraud	1	32	70	35	54
Incompetence	5	10	15	32	39
Misrepresentation	39	133	74	77	52
No Jurisdiction	3	58	14	5	5
Noncompliance w/ Licensing Requirements	1	73	319	3	107
Other	24	43	22	14	9
Prohibited Act/Conduct (Criminal Conduct)	12	61	37	55	32
Prohibited Compensation	1	11	58	66	41
Unlicensed Activity	81	103	203	328	184
Unpaid Third-Party Provider	1	9	17	14	10
Violation of Federal Regulation	1	5	0	0	1
Total	**173**	**563**	**867**	**668**	**579**

The total number of complaints dropped significantly in fiscal years 09-10 and 10-11, which is consistent with the decrease in the number of licensed mortgage loan originators.

The majority of the complaints against mortgage loan originators are for unlicensed activity or for not complying with licensing requirements. However, mortgage loan originators also receive a high number of complaints that allege fraud, misrepresentation, and criminal conduct.

Additionally, many complaints concern mortgage loan originators who charge buyers fees whether or not they procure a loan. Some of these complaints, but not all, were related to loan modifications during the foreclosure crisis and others were related to mortgage loans for investment properties.

Noncompliance with licensing requirements may include failure to maintain E&O insurance or a surety bond, or to complete the required continuing education. In 2009, new licensing requirements were imposed on mortgage loan originators resulting in a high number of complaints. In 2011, the Division opened numerous complaints to determine compliance with the new licensing requirements. The Division no longer opens complaints specifically to determine licensing compliance.

The Board has the authority to revoke a license, deny a license, suspend a license, impose probation, censure a licensee, issue a letter of admonition, issue a cease and desist order, impose a fine, order the payment of actual damages, and order restitution.

If the Board finds an instance of misconduct that does not warrant formal action but that should not be dismissed without merit, the Board may issue a letter of admonition.

Table 7 shows the disciplinary actions and dismissals for this program over a five-year period.

Table 7
Mortgage Loan Originators
Final Agency Actions

Type of Action	06-07	07-08	08-09	09-10	10-11
Revocation/Surrender	0	11	118	58	29
Suspension	0	1	20	28	13
Permanent Injunction	0	0	0	0	1
Probation/Practice Limitation	0	0	2	8	12
Cease and Desist	0	11	111	150	105
Letter of Admonition	0	2	0	0	1
License Denial	38	54	7	2	2
Public Censure	0	4	53	50	22
Stipulated Agreements/Diversion	0	0	3	66	54
Total Disciplinary Actions	**38**	**83**	**314**	**362**	**239**
Total Dismissals	0	293	308	340	606

When the program began it was a registration program, and the only possible agency action was to deny a registration. Once the program became a licensing program and the complaints began to come in, it took some time for the complaints to be investigated and acted on. Disciplinary activity peaked in fiscal years 08-09 and 09-10.

In fiscal year 10-11, some disciplinary actions decreased, including license revocations and surrenders, suspensions, and public censures. At the same time, the number of dismissals increased substantially.

In 2010, the mortgage loan originator program transitioned from a Director-model program to a five-member Board. The Board delegates some of its disciplinary authority to Division staff. The difference in agency actions may be related to the new regulatory model and to structural changes within the Division.

Although more complaints were received in previous years, the Board and Division staff resolved more complaints in fiscal year 10-11 than in any other year. The increase in final agency actions, including dismissals, may be due to a more efficient system of complaint handling and the subsequent resolution of complaints from previous years.

Letters of admonition were rarely used by the Director, and they are rarely used by the Board.

Table 8 shows the fines collected over a five-year period.

Table 8
Fines

Fiscal Year	Number of Fines	Total Value	Stayed Fines
06-07	0	0	0
07-08	5	$8,150	0
08-09	91	$844,433	$85,075
09-10	153	$273,333	$48,520
10-11	99	$381,344	$32,100

Complaints and disciplinary activity peaked in 08-09, which may account for the increase in the total value of fines that year. Although the number of fines increased in fiscal years 09-10 and 10-11, the total value in fines actually decreased. The decrease in the total value of fines may be due to a change in the regulatory model.

A significant portion of the total cost of the program is paid for by the fines imposed by the Board. In fiscal year 08-09, the total value of fines imposed amounted to 83 percent of the total program expenses, but in fiscal years 09-10 and 10-11, the amount of fines dropped to 22 and 35 percent, respectively, of the total program expenses.

Mortgage Company Registration

As of January 2011, mortgage companies are now required to register with NMLS. In order to register, a mortgage company must apply for a registration through the NMLS database and pay a fee.

In order to register with NMLS, a mortgage company must be in good standing with the Colorado Secretary of State and may not be legally barred from doing business in Colorado.

In 2011, there were 811 registered mortgage companies.

The grounds for discipline include:

- Acting without proper registration;
- Failing to maintain possession of documents as prescribed by the Board;
- Employing or acting through unlicensed mortgage loan originators; or
- Engaging in noncompliant, false, or deceptive advertising.

Table 9 illustrates the complaints against mortgage companies in fiscal year 10-11.

Table 9
Mortgage Company Complaints
Fiscal Year 10-11

Complaint Types	FY 10-11
Advertising	9
Failure to Maintain Documents	0
Failure to Register	0
Employing Unlicensed Individuals	43
Total	**52**

The Board has the authority to deny a mortgage company registration, refuse to renew, suspend, or revoke a registration, issue a cease and desist order, and impose a fine.

Since the registration of mortgage companies began in 2011, the Board has sent seven letters of admonition to mortgage companies for violations of the Act, and it imposed three fines totaling $6,650.

Analysis and Recommendations

Recommendation 1 – Continue the Mortgage Loan Originator Licensing and Mortgage Company Registration Act for five years, until 2017.

The Mortgage Loan Originator Licensing and Mortgage Company Registration Act (Act) is contained in Part 9 of Article 61 of Title 12, Colorado Revised Statutes (C.R.S.). Under the Act, the Colorado Board of Mortgage Loan Originators (Board) is vested with the authority to license and discipline mortgage loan originators. The Board is also granted the authority to register mortgage companies.

The federal government requires all states to license mortgage loan originators according to the standards established in the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act).

In addition to the SAFE Act, mortgage loan originators are governed by numerous other federal laws, among them:

- The Truth in Lending Act;
- The Real Estate Settlement Procedures Act;
- The Equal Credit Opportunity Act;
- Title V, Subtitle A of the Gramm-Leach-Bliley Act;
- The Home Mortgage Disclosure Act;
- The Federal Trade Commission Act; and
- The Telemarketing and Consumer Fraud and Abuse Prevention Act.

In Colorado, mortgage loan originators and mortgage companies are also governed by the Uniform Consumer Credit Code and certain provisions in Title 38, C.R.S.

The Consumer Financial Protection Bureau (CFPB) is the federal regulatory authority that oversees state licensure of mortgage loan originators. If the CFPB finds that a state is noncompliant with the SAFE Act, it has the authority to take over the regulation of mortgage loan originators in that state.

Regulation by the state is generally preferable to regulation by the federal government for many reasons. For one, the General Assembly may adjust regulation according to local standards and requirements. It also provides the state with more control over the implementation of the regulatory program, and a local regulator is also more accessible and responsive to the public and to the industry.

Sunset reviews are guided by statutory criteria found in section 24-34-104, C.R.S., and the first criterion asks whether regulation is necessary to protect the health, safety, and welfare of the public.

In 2005, DORA found that fraud was a pervasive and growing problem in the mortgage industry. At that time, only Colorado and Alaska did not regulate the mortgage industry, and Colorado led the nation with the highest foreclosure rate.[81] In 2006, Colorado created a program to regulate mortgage loan originators, primarily to contend with the growing problem of mortgage fraud.

The most common type of mortgage fraud involves loan origination schemes. Such schemes may include falsifying a borrower's financial information in order to qualify a buyer for a mortgage loan. Loan origination schemes may also include buying and selling property with a fictitious renovation to inflate property value. Other cases involve illegal property flipping in which a fraudulent appraisal enables a buyer to obtain a larger loan than the property is worth. A property value may also be fraudulently inflated during the loan origination process to generate artificial equity that is quickly pocketed.[82]

The harm caused by fraudulent loan origination schemes is clear. A homeowner may experience financial loss when the actual value of the home is revealed, and he or she is unable to sell or refinance a home, or the homeowner may be forced into a short sale or a foreclosure. When properties are overvalued, the values in the real estate market are artificially inflated, and buyers are burdened with negative equities on their homes. Lenders lose money when the market is glutted with borrowers who fail to repay loans and properties cannot support the value of the loans.

Mortgage fraud continues to be prevalent in the mortgage industry, and Colorado rates high among states with suspected mortgage fraud.[83]

Other types of mortgage-related harm involve equity skimming, taking payment and not providing any services, misrepresentation of the terms and conditions of the loan, and other criminal conduct.

The Act protects the public by vesting the Board with the authority to sanction or remove from the marketplace dishonest or incompetent mortgage loan originators. In order to obtain a license, a mortgage loan originator must pass a fingerprint-based criminal history check, and federal law prohibits licensing anyone with a felony conviction within the previous seven years, or a felony conviction at any time if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

Since the program began, the Director and the Board have issued 1,036 final agency actions, including revocations, suspensions, permanent injunctions, probation or practice limitations, cease and desist orders, letters of admonition, license denials, public censures, and stipulated agreements. Specifically, the Director and the Board have removed from the marketplace, either through license denials or revocations, 319 individuals.

[81] Realty Trac Staff, "More Than 1.2 Million Foreclosure Filings Reported in 2006," *RealtyTrac*, February 8, 2007.
[82] *2010 Mortgage Fraud Report: Year in Review,* Federal Bureau of Investigation (2011), pp. 17-21.
[83] *2010 Mortgage Fraud Report: Year in Review,* Federal Bureau of Investigation (2011), p. 11.

This program is mandated by the federal government. Therefore, the licensing of mortgage loan originators should be continued in order to comply with federal law.

In 2010, the program changed from a director model to a board model. Since the Board is only two years old, sufficient data necessary to fairly assess the performance of the Board does not exist.

Most states require mortgage companies to be licensed, and many states also regulate mortgage loan servicing. Colorado simply requires companies to be registered. It does not provide the Board with the authority to audit or examine mortgage companies.

Registration of mortgage companies was created by the General Assembly when it found that there were problems with mortgage companies regarding three areas:

- Retention of records;
- Misleading advertising; and
- Acting or employing unlicensed individuals required to be licensed by the Act.

Since registration of mortgage companies began in January 2011, it is difficult to determine the effectiveness of the program and whether conditions have changed to warrant more, less or the same degree of regulation, as required by the sunset criteria.

As authorized in section 24-34-104, C.R.S., the General Assembly may continue this program for any period between 1 and 15 years.

The mortgage loan originator program has undergone significant changes since its inception in 2007, and mortgage loan originators are now under the authority of the CFPB. As a new federal agency, the CFPB is scheduled to finalize its regulations in January 2013, and significant changes in mortgage lending and the regulation of mortgage loan originators may follow.

Considering the numerous and sweeping changes over the last five years and with more changes to come, it is logical to review the Board within a relatively short timeframe.

Therefore, the General Assembly should continue the Board and the regulation of mortgage loan originators and mortgage companies for five years, until 2017.

Recommendation 2 – Amend the Act so that license disqualifiers for criminal convictions comply with the SAFE Act.

Currently, the Act provides the Board with the authority to deny, refuse to renew, or revoke the license of an individual who has, among other things:[84]

- Been convicted of, or pled guilty or *nolo contendere* to, a felony within the seven years immediately preceding the date of application for a license or registration;
- At any time preceding the date of application for a license or registration, been convicted of, or pled guilty or *nolo contendere* to, a felony in a domestic, foreign, or military court if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering; except that, if the individual obtains a pardon of the conviction, the individual shall not be deemed convicted for purposes of the Act; and
- Had a mortgage loan originator license or similar license revoked in any jurisdiction.

Under the SAFE Act, states are required to deny a license under these circumstances. Because the Act's provisions regarding this issue are permissive rather than mandatory, the Act does not meet the minimum requirements of the federal SAFE Act.[85]

Therefore, the General Assembly should amend the Act so that the license disqualifiers for criminal convictions comply with the SAFE Act.

Recommendation 3 – Allow the Board to discipline or deny a license of a mortgage loan originator with a deferred judgment.

Currently, the Act allows the Board to deny, refuse to renew, or revoke the license of an individual who has:

- Within the last five years, been convicted of, or pled guilty or *nolo contendere* to, a crime involving fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty;[86]

- Been convicted of, or pled guilty or *nolo contendere* to, a felony within the seven years immediately preceding the date of application for a license or registration;[87] or

[84] §§ 12-61-905(1)(g), (h), and (i), C.R.S.
[85] 12 U.S.C. §§ 5101-5116
[86] § 12-61-905(1)(b), C.R.S.
[87] § 12-61-905(1)(i), C.R.S.

- At any time preceding the date of application for a license or registration, been convicted of, or pled guilty or *nolo contendere* to, a felony in a domestic, foreign, or military court if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.[88]

Additionally, the Board has the authority to impose discipline or deny a license when the Board finds that an individual has been convicted of, entered a plea of guilty to, or entered a plea of *nolo contendere* to specific crimes enumerated in the statute.[89]

However, if a licensed mortgage loan originator pleads guilty to any of these crimes and receives a deferred judgment, the Board may not take disciplinary action or deny a license based on the deferred judgment.

In a deferred judgment, a defendant pleads guilty to a charge, and the court provides the defendant a probationary period prior to a conviction or sentencing. If the defendant completes the probationary period without violating the terms, the court may dismiss the charges. On the other hand, if the defendant does not comply with the terms and conditions of the probation, the court may enter a conviction and proceed to sentencing.

According to section 18-1.3-102(2), C.R.S., upon full compliance with the conditions of a deferred judgment, a plea of guilty is withdrawn and the charge upon which the judgment and sentence of the court was deferred is dismissed.

In 1990, the Colorado Board of Nursing disciplined a registered nurse, in part, based on a guilty plea for felony check fraud. However, the nurse had already successfully completed the terms of the deferred judgment, so the guilty plea and the conviction for felony check fraud effectively did not exist. Based on this, the Colorado Court of Appeals ruled that the Board of Nursing could not use the previous guilty plea as grounds for discipline.[90]

The court stated that other statutes, such as those for school teachers, specifically allow for discipline based on a guilty plea that results in a deferred judgment, and since the nursing practice act did not have such a provision, the court concluded that the legislature did not intend a guilty plea that resulted in a deferred judgment to be used as grounds for discipline.[91]

The statutory criteria that guide a sunset review ask whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices, and any other circumstances.[92]

---

[88] § 12-61-905(1)(h), C.R.S.
[89] § 12-61-905.5(1)(n), C.R.S.
[90] *Weber v. Colo. State Bd. of Nursing,* 830 P.2d 1128, 1132 (Colo. App. 1992)
[91] *Weber v. Colo. State Bd. of Nursing,* 830 P.2d 1128, 1132 (Colo. App. 1992)
[92] § 24-34-104, C.R.S.

In one case, a mortgage loan originator entered a plea of guilty for felony forgery, and another entered a plea of guilty for felony theft. Both were granted deferred sentences. Based on the deferred sentences, the Board does not have the authority to take any action against either license.

If the Board, because of a technicality, cannot discipline or remove a mortgage loan originator from the marketplace when it finds him or her to be unsafe, then public protection is compromised.

For these reasons, the General Assembly should amend the grounds for discipline to allow the Board to impose discipline or deny a license in case a mortgage loan originator has received a deferred judgment for any of the crimes enumerated in the Act.

Recommendation 4 – Repeal a provision that requires persons that are already exempted from the Act to comply with the Act.

Section 12-61-904(1)(b), C.R.S., exempts the following from the Act:

> A person, estate, or trust that provides mortgage financing for the sale of no more than three properties in any 12-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan.

In section 12-61-911(1), C.R.S., all mortgage loan originators including the above persons are prohibited from engaging in specific conduct such as:

- Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- Obtaining property by fraud or misrepresentation;
- Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engaging in "bait and switch" advertising;[93] and
- *Failing to comply with any provision of the Act or any rule adopted pursuant to the Act.*

The prohibited conduct section protects borrowers from the enumerated practices even when the mortgage loan originator is exempt from the remainder of the Act. However, the italicized bullet above, which appears at section 12-61-911(1)(m), C.R.S., is problematic in that it requires the otherwise exempted persons to comply with the entire Act.

[93] Bait and switch advertising: advertising a product at a low price when it is not available for sale in order to entice customers to buy a more expensive product.

Essentially, one provision exempts a group from the Act, and another provision requires the same group to comply with the entire Act.

Section 12-61-911(1)(m), C.R.S., which prohibits the otherwise exempted group from violating the Act, is intended to bring everything together under one simple provision. However, it should be repealed.

Repealing this provision will not compromise public protection. Another section of the Act requires licensed mortgage loan originators to comply with the Act and any rule adopted pursuant to the Act, thereby fulfilling the purpose of section 12-61-911(1)(m), C.R.S., with respect to licensed mortgage loan originators.[94]

Therefore, the General Assembly should repeal section 12-61-911(1)(m), C.R.S.

Recommendation 5 – Clarify the language in the Act to more clearly state that when a license is required by the Act, mortgage companies may only employ and act through licensed individuals.

Unlicensed activity has been and continues to be the number one area of complaint in the mortgage loan originator program.

Table 14 illustrates the complaints for unlicensed activity over the five years under review.

Table 14
Complaints of Unlicensed Activity

Fiscal Year	Complaints of Unlicensed Activity	All Complaints	Percent of Complaints
06-07	81	174	47%
07-08	103	564	18%
08-09	203	868	23%
09-10	328	668	49%
10-11	184	580	32%

[94] § 12-61-905.5(1)(m), C.R.S.

This issue was addressed by House Bill 10-1141, which granted the Board the authority discipline a mortgage company if:[95]

> the mortgage company employs or acts through individuals subject to its control who are unlicensed at the time of hire and not in the process of becoming licensed, who are required to be licensed pursuant to this the Act, or if the mortgage company, after notice, continues to employ or act through individuals subject to its control whose required licenses are not valid.

The language in the statute is problematic for a number of reasons. First, it limits the requirement to employees of the mortgage company since it may be argued that independent contractors are not "subject to its control." This appears to allow mortgage companies to hire unlicensed independent contractors without consequence.

Second, the company is only responsible to ensure that its employees are licensed or in the process of being licensed at the time of hire. It does not require the company to ensure licensure after employees are hired.

Third, the statute prohibits mortgage companies from continuing to employ or act through unlicensed individuals only after the company has been provided notice.

The General Assembly should eliminate some of this language to simplify the Act so that it clearly states that mortgage companies may only employ and act through licensed individuals when a license is required by the Act.

It is not an onerous requirement for employers to ensure that the individuals who are working for them are licensed. Licensing information is readily available to the public through the Nationwide Mortgage Licensing System and Registry and through the Division website. Annually, mortgage companies can easily check to ensure that their employees and independent contractors have renewed their licenses. On a monthly basis, the Division posts a list of individuals who have lost their licenses due to a Board action, and mortgage companies can easily access an online database to check the current status of a license at any time.

Therefore, the General Assembly should amend the Act to clarify that when a license is required by the Act, mortgage companies may only employ or act through licensed individuals.

[95] § 12-61-905.1(1)(c), C.R.S.