COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research & Regulatory Reform

2017 Sunset Review:

Mortgage Loan Originator Licensing and Mortgage Company Registration Act

October 13, 2017

COLORADO
Department of
Regulatory Agencies
Executive Director's Office

October 13, 2017

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 Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and

- 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 Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Mortgage Loan Originator Licensing and Mortgage Company Registration Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2018 legislative committee of reference.

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 Board of Mortgage Loan Originators and the Division of Real Estate 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,

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Executive Director

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2017 Sunset Review
Mortgage Loan Originator Licensing and Mortgage Company Registration Act

SUMMARY

What is regulated?
A mortgage loan originator (MLO) is an institution or individual that works with a borrower to secure a mortgage and complete a transaction.

Why is it regulated?
Much of MLO regulation was prompted by the collapse of a segment of the mortgage industry and the subsequent bailout of many financial institutions during the first decade of this century. Regulation of MLOs was virtually nonexistent prior to the collapse and resulting recession. The federal government plays a major role in regulating the mortgage industry and individual MLOs. The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) requires states to regulate MLOs.

Who is regulated?
During fiscal year 15-16, the Board of Mortgage Loan Originators (Board) licensed 9,538 MLOs and verified that 942 mortgage companies were registered with the Nationwide Mortgage Licensing System and Registry (NMLS).

How is it regulated?
The type 1 Board is empowered to implement the Mortgage Loan Originator Licensing and Mortgage Company Registration Act (Act). The five-member Board meets every other month to review license applications and complaints, and to discuss issues pertinent to regulating the profession. The Colorado Division of Real Estate (Division) is the administrative arm of the Board.

What does it cost?
During fiscal year 15-16, the Division expended $960,761 and allotted 1.8 full-time equivalent employees administering the Act.

What disciplinary activity is there?
During the period under review, fiscal years 11-12 through 15-16, the Board took 344 total disciplinary actions. Of those actions, 80 percent were fines for not being in compliance with continuing education requirements.

Key Recommendations

Continue the Act for 11 years, until 2029.

The federal government plays a major role in regulating the mortgage industry and MLOs. The SAFE Act required states to regulate MLOs by 2009. Prompted by the collapse of a segment of the mortgage industry and the subsequent bailout of many financial institutions during the first decade of this century, the Act was adopted and it embodies the protections mandated by federal law to protect Colorado residents.

Because of the financial hardships suffered by Americans that was driven, in part, by dishonest MLOs, and because the federal government is not willing or able to take on the tasks necessary to fulfill the licensing requirements it has mandated, it is necessary for Colorado to satisfy those federal requirements by licensing MLOs and verifying that mortgage companies are registered with the NMLS.

Amend the Act such that the Board has 60 days to issue a license after all documentation, including any supplementary information, has been received.

The Act directs that the Board must issue a license within 60 days of receiving licensing information. Meeting this deadline is typically not an issue, but problems may arise when a criminal history check demands more investigation. Because the Board does not have a workload that demands that it should meet more than every other month, at times it becomes difficult to comply with the 60-day mandate.

Methodology

As part of this review, Colorado Office of Policy, Research, and Regulatory Reform staff attended Board meetings; interviewed Division staff and Board members, officials with state and national professional associations, stakeholder organizations, federal regulators with the Consumer Financial Protection Bureau, and a representative from the NMLS; and reviewed Board records, Colorado statutes and rules, and federal laws.

Major Contacts Made During This Review

Brother's Redevelopment
Colorado Association of Mortgage Professionals
Colorado Bankers Association
Colorado Mortgage Lenders Association
Consumer Financial Protection Bureau
Housing Colorado
Independent Bankers of Colorado
Impact Mortgage Management Advocacy and Advisory Group
Mountain West Credit Union Association
National Association of Mortgage Brokers
Nationwide Multistate Licensing System and Registry
Office of the Colorado Attorney General
Rocky Mountain Home Association
TIAA Financial Services
U.S. Small Business Administration

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether 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:
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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 Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within 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;

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

- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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 on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the State Board of Mortgage Loan Originators (Board) as enumerated in Part 9 of Article 61 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2018, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to regulate mortgage loan originators should be continued and to evaluate the performance of the Board and the staff of the Colorado Division of Real Estate (Division). During this review, the Board and the Division must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff attended Board meetings; interviewed Division staff and Board members, officials with state and national professional associations, stakeholder organizations, federal regulators with the Consumer Financial Protection Bureau, and a representative from the Nationwide Mortgage Licensing System and Registry; and reviewed Board records, Colorado statutes and rules, and federal laws.

Profile of the Profession

A mortgage loan originator (MLO) is an institution or individual that works with a borrower to secure a mortgage and complete a transaction. MLOs are part of the primary mortgage market who work with loan underwriters and loan processors to gather needed documentation and to guide the application through approval.[2]

Mortgage bankers and mortgage brokers are two of the most common types of MLOs. Important distinctions exist between the two:[3]

- A mortgage banker works for a lending institution that funds mortgages with its own money. Most retail banks and credit unions employ mortgage bankers.
- A mortgage broker is an intermediary between the borrower and various mortgage banking institutions. The broker takes the application, checks credit and income, and often handles much of the underwriting and processing. The mortgage broker identifies a lending institution to fund the mortgage.

An MLO must convince clients that he or she is competent and then help those clients navigate the loan process from application to closing. In this regard, an MLO is a salesperson first and a loan chaperon second.[4]

Mortgage loan approval takes a team. The entire team, including the MLO, the borrowers, the processors, underwriters, and closers, is focused on the same successful outcome. The MLO manages the team. That an MLO is primarily a salesperson is not a negative or a cautionary caveat. If a person or couple is borrowing hundreds of thousands of dollars that will be paid back over decades, that person or couple must trust the MLO who is selling the product. In general, MLOs are skilled in communicating trust and confidence.[5]

MLO employment is projected to grow eight percent nationally from 2014 to 2024, about as fast as the average for all occupations. The need for loan originators fluctuates with the economy, generally increasing in times of economic growth, low interest rates, and population growth—all of which create demand for loans.[6]

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[2] Investopedia. *Mortgage Originator*. Retrieved January 17, 2017, from http://www.investopedia.com/terms/m/mortgage_originator.asp
[3] *ibid.*
[4] Forbes. *What is a Loan Originator?* Retrieved January 17, 2017 from http://www.forbes.com/sites/markgreene/2016/10/21/what-is-a-loan-originator/#6b411b081394
[5] *ibid.*
[6] US Department off Labor, Bureau of Labor and Statistics. *Occupational Outlook Handbook*. Retrieved January 19, 2017, from https://www.bls.gov/ooh/business-and-financial/loan-officers.htm

Legal Framework

History of Regulation

Regulation of mortgage brokers in Colorado began in 2006 when the General Assembly authorized a registration program. At that time, mortgage brokers were required to pass a criminal history check and post a bond. The Director of the Division of Real Estate (Director and Division, respectively) 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.

In 2007, the General Assembly made multiple changes. The registration program became a licensing program. Education, passage of an examination, and errors and omissions insurance were added as requirements for a license. The Director was granted additional power to deny, refuse to renew, or revoke the license 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. Unconscionable acts, such as providing loans without regard to the borrower's ability to repay or refinancing an existing loan without any benefit to the borrower, were prohibited. A prohibition on mortgage brokers from influencing the independent judgment of appraisers by coercion, payment, or intimidation was also passed into law.

In 2009, the General Assembly reworked regulation to comport with the federal Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). The Colorado Board of Mortgage Loan Originators (Board) was created during the following legislative session.

Legal Framework

A mortgage loan originator (MLO) is a person who takes a mortgage loan application, or offers or negotiates the terms of a residential mortgage loan.[7]

Federal Regulation

The federal government plays a major role in regulating the mortgage industry and individual MLOs.

The SAFE Act is the most consequential federal law governing MLOs. The SAFE Act was passed in 2008 and gave states until August 1, 2009, to require an MLO license or registration. The SAFE Act sets minimum standards for regulating MLOs. MLOs who work for an insured depository institution or a subsidiary that is regulated by a federal banking agency, or for an institution regulated by the Farm Credit Administration, must be registered. All other MLOs must be licensed in their respective states and all MLOs

[7] § 12-61-902(6)(a), C.R.S.

must be registered with the Nationwide Mortgage Licensing System and Registry (NMLS).[8] All companies, whether an entity or sole proprietor, must also register with the NMLS.[9]

The SAFE Act requires that state MLO licensure programs include: a written test, pre-license education, annual continuing education, and a financial responsibility provision satisfied by either a net worth, surety bond, or recovery fund. The SAFE Act also requires all MLOs to submit fingerprints to the NMLS for a Federal Bureau of Investigation (FBI) criminal history check and it requires state-licensed MLOs to authorize the NMLS to obtain a credit report.[10]

In addition to the SAFE Act, federal laws that play a major role in the mortgage industry include the Fair Housing Act, which prohibits discriminatory practices based on race, color, national origin, religion, gender, familial status, or disability in mortgage lending.[11]

The Truth in Lending Act (TILA), also known as Federal Reserve Board Regulation Z, governs conduct in the mortgage industry. TILA does not regulate interest rates but does require that lenders provide comprehensive disclosures to borrowers that include:[12]

- The annual percentage rate for interest;
- Any finance charges, which may include application fees, late charges, prepayment penalties;
- A payment schedule; and
- The total repayment amount over the lifetime of the loan.

The Real Estate Settlement Procedures Act (RESPA) requires that lenders provide information to prospective borrowers at certain points in the loan settlement process. It also prohibits paying kickbacks. Prior to RESPA's enactment it was common for lenders to offer a special rate for using an affiliated company.[13]

Similarly, the Home Equity Loan Consumer Protection Act of 1988 requires terms be disclosed on home equity loans. The Home Ownership and Equity Protection Act attempts to draw the line between predatory and valid lending. It bars practices associated with predatory lending such as frequently refinancing a home loan in order to charge fees. It also requires lenders to take into account a borrower's ability to repay

[8] NMLS. *SAFE Mortgage Licensing Act of 2008*. Retrieved March 2, 2017, from http://mortgage.nationwidelicensingsystem.org/safe/Pages/default.aspx
[9] NMLS. *Getting Started: State-Licensed Companies*. Retrieved August 17, 2017, from http://mortgage.nationwidelicensingsystem.org/slr/resources/Pages/GettingStartedStateCo.aspx
[10] *NMLS. SAFE Mortgage Licensing Act of 2008. Retrieved March 2, 2017, from http://mortgage.nationwidelicensingsystem.org/safe/Pages/default.aspx*
[11] U.S. Department of Housing and Urban Development. *Fair Housing – It's Your Right*. Retrieved April 20, 2017, from https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/yourrights
[12] Debt.Org. *Truth in Lending Act - Consumer Rights and Protections*. Retrieved May 2, 2017, from https://www.debt.org/credit/your-consumer-rights/truth-lending-act/
[13] Investpedia. *Real Esate Settlement Procedures Act -RESPA*. Retrieved August 29, 2017, from http://www.investopedia.com/terms/r/real-estate-settlement-procedures-act-respa.asp

the loan with interest. Lenders cannot offer a loan which they know a borrower cannot repay it.[14]

The Equal Credit Opportunity Act (ECOA) prescribes equal opportunity to apply for loans. The ECOA states that individuals cannot be discriminated against based upon factors that are not directly related to their creditworthiness. Among other things, it prohibits creditors and lenders from considering a consumer's race, color, national origin, sex, religion or marital status in deciding whether to approve their loan or credit application.[15]

Colorado Law

The Mortgage Loan Originator Licensing and Mortgage Company Registration Act (Act) creates a cash-funded program[16] implemented through the five-member, Governor-appointed, type 1 Board. Three members are required to be licensed mortgage loan originators and two must be members of the public not engaged in mortgage loan origination or mortgage lending.[17]

A type 1 board exercises a large degree of autonomy. Section 105 of Article 1, Title 24, Colorado Revised Statutes (C.R.S.), which authorizes type 1 boards, reads in part:

> [A board transferred under a type 1 transfer] shall exercise its prescribed statutory powers, duties, and functions, including rule-making, regulation, licensing, and registration, the promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications, independently of the head of the principal department.

The Board is empowered to make rules, and enforce and administer the Act. The Board also has the authority to delegate specific enforcement and administrative authority to the Director.[18]

LICENSING

The primary purpose of the Act is to license mortgage loan originators and to ensure mortgage companies are registered with the NMLS. It is a violation of the Act to originate or offer to originate a mortgage loan without being licensed by the Board.[19] Operating without a license is a Class 1 misdemeanor for each violation.[20] As the regulator, the Board may deny, refuse to renew, or revoke a license if a person has made a material misstatement of fact on an application, omitted a disclosure, or been convicted of or pled guilty or nolo contendere to a crime involving fraud, deceit,

[14] *Debt.Org. Truth in Lending Act - Consumer Rights and Protections*. Retrieved May 2, 2017, from https://www.debt.org/credit/your-consumer-rights/truth-lending-act/
[15] Investopedia. *Equal Credit Opportunity Act*, Retrieved May 16, 2017, from http://www.investopedia.com/terms/e/ecoa.asp
[16] § 12-61-908, C.R.S.
[17] § 12-61-902.5(1), C.R.S.
[18] §§ 12-61-902.5(2)(b), and -910.3, C.R.S.
[19] § 12-61-903(1)(a), C.R.S.
[20] § 12-61-910(1)(a), C.R.S.

material misrepresentation, theft, or the breach of a fiduciary duty within the previous five years.[21] Similarly, the Act provides that if a person has had a real estate, legal, or financial professional license revoked or suspended for these reasons in any state during the previous five years, the Board may deny, refuse to renew, or revoke a license.[22]

The Act does allow, however, that if the Board or an administrative law judge (ALJ) determines that an application contained a misstatement of fact or omitted a required disclosure unintentionally, the Board must allow the applicant to correct the application. Once the corrected application is received, the Board or ALJ cannot block the license on the grounds of the misstatement or omission.[23]

To apply for a license, an applicant must obtain a criminal history check, submit a disclosure of all administrative discipline taken against the applicant, as well as an application fee.[24]

In addition to these requirements, an applicant must provide information to, and be registered with, the NMLS. Therefore, the licensing requirements are markedly similar to those required by the SAFE Act. The applicant must furnish, at a minimum, the following:[25]

- Fingerprints for submission to the FBI;
- Personal history and experience;
- Credit report from the consumer reporting agency defined in the federal Fair Credit Reporting Act; and
- Information associated with administrative, civil, or criminal findings by a government jurisdiction.

The Board reports violations of the Act by an MLO to the NMLS and may require an MLO or a company to submit reports to the NMLS.[26]

Applicants must also complete nine hours of education in mortgage lending fundamentals approved by the Board and pass an examination.[27] A surety bond, which must be in place at all times, is required prior to licensing. The Act requires that the bond be $25,000 or an amount determined by the Board.[28] A licensee must also carry errors and omissions insurance, unless he or she is a licensed attorney with errors and omissions insurance coverage.[29] Once all the necessary information has been received, the Board has 60 days to issue or deny a license.[30]

The Act also requires that every mortgage company be registered with the NMLS and the Colorado Secretary of State. The only requirements for registration with the NMLS are

[21] §§ 12-61-905(1)(a) and (1)(b), C.R.S.
[22] § 12-61-905(1)(c), C.R.S.
[23] § 12-61-905(5)(b), C.R.S.
[24] § 12-61-903(2), C.R.S.
[25] § 12-61-903(5.5)(a), C.R.S.
[26] § 12-61-917, C.R.S.
[27] § 12-61-903(3)(a), C.R.S.
[28] §§ 12-61-903(6), 903.3(1)(c), and 907(1), C.R.S.
[29] § 12-61-903.5(1), C.R.S.
[30] § 12-61-903(7), C.R.S.

that a company be in good standing with the Colorado Secretary of State, and not be legally prohibited from operating in Colorado.[31]

To renew a license, a licensee must complete required continuing education and pay a fee.[32] The Act requires a minimum of eight credit hours each year and provides that the Board may determine other requirements by rule.[33]

The Act provides license exemptions for individuals, estates, and trusts, and their real estate agents, who provide mortgages on no more than three properties per year. There are also exemptions for banks, savings associations and their subsidiaries, and attorneys who do not primarily negotiate residential mortgages.[34] Additional exemptions are extended to:[35]

- Mortgage funders or people who merely set the terms of a loan originated by another person;
- Individuals who do not solicit mortgage borrowers or loan processors and underwriters who do not advertise to the public;
- Governmental programs providing affordable housing;
- Quasi-governmental and U.S. Department of Housing and Urban Development-approved housing counseling agencies and their employees;
- Community development organizations and their employees; and
- Self-help housing organizations and their employees and volunteers.

The Act directs that the Board make rules to allow MLOs to employ unlicensed mortgage originators under a temporary license. If the mortgage originator has begun the licensing process, he or she will be issued a temporary license for a “reasonable period” until the license is approved or denied by the Board. The employer is responsible for all actions taken under the Act by any unlicensed person in its employ.[36] However, an employer cannot be held responsible unless it appears that he or she knew or should have known about the unlawful act or violation.[37]

Discipline

Individuals

In addition to those reasons for denial or discipline noted above, the Board has the authority to deny, refuse to renew, or revoke a license for several other reasons:

- Influencing an appraiser;[38]
- Not demonstrating 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;[39]

[31] § 12-61-903.1(1), C.R.S.
[32] § 12-61-903.7(1), C.R.S.
[33] § 12-61-903(8)(b), C.R.S.
[34] §§ 12-61-904(1)(b)-(1)(d), C.R.S.
[35] §§ 12-64-904(1)(f)-(1)(k), C.R.S.
[36] § 12-61-905(10), C.R.S.
[37] § 12-61-911.5, C.R.S.
[38] § §12-61-905(1)(e) and -910.2, C.R.S.
[39] § 12-61-905(1)(j), C.R.S.

- Not successfully completing the pre-license requirements;[40]
- Having had an MLO license revoked in any jurisdiction;[41] or
- Pleading guilty, nolo contendere, or being convicted of a felony within the previous seven years of application or anytime relating to fraud, dishonesty, breach of trust, or money laundering.[42]

The Board must suspend the license of a licensee who fails to maintain the required bond.[43]

The Board must maintain a system that presents consumers with a means for making complaints.[44] A person participating in good faith in the filing of a complaint or joining in an investigation or hearing is immune from civil and criminal liability.[45]

The Board may investigate any licensee for any violation of the grounds for discipline.[46] The Board is also empowered to investigate any complaint and, with reasonable cause, issue a cease and desist order to any individual that may be violating the Act.[47] If it believes a licensee is not qualified, the Board may summarily suspend that person's license pending a hearing under the State Administrative Procedure Act.[48] The Board may also issue a fine for a violation of the Act. A violation may warrant a fine up to $1,000 per occurrence and subsequent fines may be between $1,000 and $2,000.[49]

The grounds for discipline enumerated in the Act generally cover matters such as deceit, fraud, fiduciary issues, record-keeping, and unlicensed practice. The grounds also include a guilty verdict or plea of nolo contender to various criminal acts, and violating fair housing laws.[50]

The Board or an ALJ is directed to hold hearings concerning licensees and registrants.[51] If a complaint discloses a violation that the Board decides does not warrant formal discipline but should not be dismissed, it may send a letter of admonition to the licensee. The licensee may request an appeal of the letter of admonition, which means a formal disciplinary proceeding occurs.[52]

If a person is found to have violated the Act, the violator is responsible for paying all reasonable and necessary costs arising from subpoenas or requests for information issued by the Board or ALJ.[53]

All decisions by the Board or ALJ are subject to judicial review.[54]

[40] § 12-61-905(1)(k), C.R.S.
[41] § 12-61-905(1.5)(a), C.R.S.
[42] § 12-61-905(1.5)(b), C.R.S.
[43] § 12-61-905(3)(b), C.R.S.
[44] § 12-61-905(9)(a), C.R.S.
[45] § 12-61-906, C.R.S.
[46] § 12-61-905(2), C.R.S.
[47] § 12-61-905(7), C.R.S.
[48] § 12-61-905(3)(a), C.R.S.
[49] § 12-61-905(7)(b), C.R.S.
[50] § 12-61-905.5(1), C.R.S.
[51] §§ 12-61-905(4), 905.6(1), 905.6(1), and 905.6(3), C.R.S.
[52] §-61-905.5(6), C.R.S.
[53] § 12-61-905(6)(c), C.R.S.
[54] § 12-61-905.6(4), C.R.S.

BUSINESSES

Businesses may be investigated and disciplined in the same manner as individuals[55] for the following violations:[56]

- Acting without a registration;
- Failing to maintain required documents and records;
- Failing to produce documents and records upon request;
- Employing persons required to be licensed who do not possess a temporary license or a license;
- Directing, making, or causing to be made, a false or deceptive statement or representation regarding rates, points, or other financing terms or conditions;
- Engaging in bait and switch advertising; or
- Violating any rule that directly or indirectly addresses advertising requirements.

Prior to providing services to a borrower, an MLO who is also a licensed real estate broker must make a full and fair disclosure to the borrower of all material features of the loan product and all facts material to the transaction.[57] All records must be separate from real estate activities.[58]

Standards of Practice

All MLOs have a duty of good faith to borrowers. They cannot encourage a client to enter into a transaction without a tangible net benefit to the client, considering all circumstances. After making a reasonable inquiry concerning a client's income, debts, and any other relevant information, an MLO must make his or her best efforts to recommend, broker, or originate a residential mortgage loan. However, the MLO does not violate the Act if a borrower conceals or misrepresents any pertinent information.[59] If an MLO breaches his or her good faith responsibilities, it is also a violation of the Colorado Consumer Protection Act.[60]

Every application or Board-designated form used by an MLO, must show the MLO's unique identifier.[61] All disclosures concerning a loan must comply with federal regulations governing mortgages. However, the Board may require compliance with additional requirements.[62]

Generally, an MLO cannot receive compensation for preparing or negotiating a loan unless the borrower obtains the loan. However, he or she may receive remuneration when a loan is obtained for the borrower but the borrower does not close through no

[55] §§ 12-61-905.1(1) and 905.1(2), C.R.S.
[56] § 12-61-905.1(1), C.R.S.
[57] § 12-61-912(2), C.R.S.
[58] § 12-61-912(3)(a), C.R.S.
[59] § 12-61-904.5(1), C.R.S.
[60] § 12-61-904.5(3), C.R.S.
[61] § 12-61-918, C.R.S.
[62] § 12-61-914(1), C.R.S.

fault of the MLO. An MLO may also collect actual costs for third-party goods and services provided. In the former case, the MLO may not charge a fee of more than $300.[63]
An MLO must comply with federal and state law regarding privacy and confidentiality of any information.[64]

In addition to these specific provisions of the Act, an MLO must comply with section 38-40-105, C.R.S.[65] This section generally prohibits committing fraud during mortgage loan transactions. Violations are considered deceptive trade practices. The Office of the Colorado Attorney General, rather than the Board, enforces these provisions.[66] However, the Act directs that the money for implementation should come from the Division cash fund which is funded by license fees.

[63] § 12-61-915, C.R.S.
[64] § 12-61-916, C.R.S.
[65] § 12-61-905(10), C.R.S.
[66] § 6-1-103, C.R.S.

Program Description and Administration

The type 1, Board of Mortgage Loan Originators (Board) is empowered by the Mortgage Loan Originator Licensing and Mortgage Company Registration Act (Act) to regulate mortgage loan originators and mortgage companies in Colorado.[67]

The five-member, Governor-appointed Board is comprised of three members who are required to be licensed mortgage loan originators and two who must be members of the public not engaged in mortgage loan origination or mortgage lending.[68] The Board meets every other month to review license applications and complaints, and to discuss issues pertinent to regulating the profession.

Board policies are implemented by the Department of Regulatory Agencies' Division of Real Estate (Division) staff. Table 1 shows the program expenditures and full-time equivalent (FTE) employees used to administer the program during the fiscal years analyzed for this sunset review.

Table 1
Program Expenditures
Fiscal Years 11-12 through 15-16

Fiscal Year	Total Program Expenditures	FTE
11-12	$1,186,756	9.7
12-13	$1,207,712	10.5
13-14	$1,081,188	11.5
14-15	$1,034,456	6.8
15-16	$960,761	1.8

Table 1 illustrates that there has been a major reduction in the expenditures used to regulate the industry. This is due in large part to the Board taking far less regulatory action in the period since Mortgage Loan Originator (MLO) licensing began in fiscal year 07-08.

The reduction in Board activity coincides with a reduction in mortgage and foreclosure fraud activities commenced by the Office of the Colorado Attorney General (AGO) under section 38-40-105, Colorado Revised Statutes (C.R.S.).[69] Foreclosure filings dropped nearly 75 percent from 2011 through 2015. Because the Act directs that the money for those activities should come from the Division cash fund, the drop in activity allowed for an adjustment in Board legal fees. Though it is not reflected in Table 1, the AGO reduced its request of Division cash fund dollars by approximately 50 percent for the fiscal year 17-18 budget.

[67] § 12-61-902.5(1), C.R.S.
[68] § 12-61-902.5(1), C.R.S.
[69] § 12-61-905(10), C.R.S.

MLO regulation is cash-funded through the fees charged for MLO licenses. All licensure is completed online via the Division's website.

Table 2 includes the licensing fees for MLOs and mortgage company registration fees for fiscal year 16-17.

Table 2
Licensure Fees
Fiscal Year 16-17

	MLO	Mortgage Company
Initial license fee	$80	$169
License renewal fee	$34	$86
Reinstatement fee	$47	$129

The Board does not actually register mortgage companies. Rather, they register with the Nationwide Mortgage Licensing System and Registry (NMLS) and the Board verifies that registration. The fees charged by the Division are used to verify information and confirm to the NMLS that the company is suitable for registration.

Licensing

The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) established the minimum licensing protocols for states to employ when licensing MLOs.

The SAFE Act requires that state-licensed MLOs:

- Submit fingerprints to the NMLS for submission to the Federal Bureau of Investigation (FBI) for a criminal history check;
- Pass a written qualified test;
- Complete pre-licensure education courses;
- Take annual continuing education courses; and
- Provide authorization for the NMLS to obtain an independent credit report.

In addition to these requirements, to acquire a Colorado license an MLO must:

- Register with the NMLS;
- Undergo a criminal history check by the Colorado Bureau of Investigation (CBI);
- Acquire errors and omissions insurance;
- Acquire a surety bond; and
- Submit a completed application.

Because the NMLS requires the necessary pre- and post-licensing education, it approves courses and verifies with the Division that an applicant/licensee has fulfilled these requirements and passed all necessary examinations. The Division verifies all of the Colorado-specific requirements.

Concurrent with the writing of this sunset review, the Division is working with the NMLS and the FBI to eliminate the CBI background check. The existing CBI check is in place because the CBI will report any post-license criminal issues that have occurred concerning a licensee to the Board. The Board can then decide if an MLO remains eligible for a license. The FBI does not report on post-license issues but is planning to change its policy and will be able to update the Board. If that does occur, the Board has the authority to eliminate the CBI background check. Section 12-61-903(5)(b), C.R.S., reads,

> If the Board determines that the criminal background check provided by the NMLS is a sufficient method of screening license applicants to protect Colorado consumers, the Board may, by rule, authorize the use of that criminal background check instead of the criminal history record check otherwise required by this subsection …

All corroboration between the NMLS database and the Division database is completed electronically. The new system will be more efficient for renewals which will only entail a fee payment and verification of the bond and insurance provisions by Division staff.

Table 3 indicates the number of new MLO licenses and license renewals issued by the Division each year examined for this sunset review.

Table 3
Licensing Information
Fiscal Years 11-12 through 15-16

Fiscal Year	New/ Exam	Renewal	TOTAL
11-12	1,625	4,606	5,443
12-13	2,547	5,508	7,182
13-14	2,296	6,847	8,074
14-15	2,223	7,619	8,831
15-16	3,651	8,363	9,538

The number of licenses listed in the TOTAL column does not include inactive licenses. The number of new licenses issued more than doubled, approximately 125 percent, and the number of total licenses increased 75 percent during the period examined for this sunset review. This is likely due to a robust Colorado real estate market creating a demand for more mortgages.

The Act also requires that companies register with the NMLS. Table 4 includes the registration figures for the period under review.

Table 4
Company Registrations
Fiscal years 11-12 through 15-16

Fiscal Year	New	Total
11-12	103	906
12-13	100	1,039
13-14	109	1,047
14-15	115	1,129
15-16	175	942

Company registrations are somewhat variable. This is due, in part, to the fact that most of the companies are headquartered outside of Colorado so there are multiple marketplace dynamics in play. The general trend is that new registrations have risen year-over-year due to Colorado's robust real estate market.

Complaints/Disciplinary Actions

The Board is empowered to deny, refuse to renew, or revoke the license of a licensee who has violated the Act.[70] When complaints come to the Division, they are analyzed first to determine if the Board has jurisdiction over the person and the issue. If jurisdiction is determined, staff analyzes the complaint to determine if a violation has occurred. If staff determines that a violation has occurred, then they present the findings of the investigation to the Board with a recommendation for action. If staff determines that no violation has occurred, the staff dismisses the complaint.

[70] § 12-61-905(1), C.R.S.

Table 5 lists the complaint data associated with MLO regulation during the period examined for this sunset review.

Table 5
MLO Complaints
Fiscal Years 11-12 through 15-16

Complaint	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Unlicensed activity	57	19	5	8	13
Incompetency/unworthy	32	51	34	41	66
Non-compliance	47	24	39	6	2
Misrepresentation/ dishonesty/fraud	73	27	26	13	20
Criminal conviction	8	8	6	5	11
Pre-license application	9	22	46	43	133
Advertising	37	12	10	3	1
NMLS alert	0	44	9	0	0
Other	9	43	2	1	2
TOTAL	**272**	**250**	**177**	**120**	**248**

Note that while the number of licenses enumerated in Table 3 has increased during the time examined for this review, generally there has been a decrease in the complaints made against MLOs. The noteworthy exceptions are the complaints in the "Pre-license application" and "Incompetency/Unworthy" categories.

The "Pre-license application category" is somewhat misleading in a complaint table. If an investigation is necessary based on an application indicator such as an arrest, it is given a case number which automatically classifies it as a complaint. However, there is not an actual complaint registered against the applicant, it is merely classified as such to document the investigation.

The "Incompetency/Unworthy" complaints are made against a person who is out of compliance with the Act but it appears to the Board that there was no malicious intent in the violation. An example might be an administrative omission such as not providing all necessary documentation. The Board will sanction the licensee but generally not revoke a license for such violations. These violation numbers track similarly to the numbers of new licensees in Table 3. In a broad sense, this indicates that as MLOs become more seasoned, they become more competent.

Once the Board reviews the complaint and the investigation findings, it either issues discipline or dismisses the complaint. Table 6 lists the disciplinary actions taken by the Board.

Table 6
Board Final Disciplinary Actions
Fiscal Years 11-12 through 15-16

Type of Action	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Revocation / Surrender / Voluntary Relinquishment	9	3	0	1	2
Suspension	1	0	1	0	0
Probation / Practice Limitation	3	0	1	0	1
Letter of Admonition	7	11	4	0	0
License Denied	0	0	1	2	6
Fine	37	98	83	116	3
Continuing education non-compliance, includes a fine	0	88	71	115	1
Cease & Desist	32	6	0	0	0
Restitution	$136,950	$20,854	$0	$0	$0
TOTAL DISCIPLINARY ACTIONS*	**39**	**98**	**83**	**117**	**7**

**The total actions do not match the sum of the actions listed above because multiple actions may have been taken in an individual case.*

Table 6 indicates that there are very few final disciplinary actions taken by the Board. Most of the actions taken involve "Continuing education non-compliance." If a control for "Continuing education non-compliance" is established, the data indicate that the number of actions taken by the Board declined dramatically over the review period. The high number of "Continuing education non-compliance" actions is due to the implementation of the continuing education requirement and audits performed to ensure licensees completed the requirement. The fiscal year 15-16 total illustrates that those actions too have slowed dramatically.

During fiscal years 11-12 and 12-13, restitution was used as part of a larger set of conditions a licensee would have to satisfy to remain licensed for glaringly flagrant violations. In the following years, the Board saw fewer and less egregious problems and no restitution was required.

The Board also has the ability to impose fines up to $1,000 for an initial violation and up to $2,000 for subsequent violations of the Act.[71] Table 7 enumerates the total amount of fines imposed and the amount of those fines that were stayed during the review period.

[71] § 12-61-905(7)(b), C.R.S.

Table 7
Fines
Fiscal Years 11-12 through 15-16

Fiscal Year	Number of Fines Imposed	Total Value of Fines Imposed	Total Value of Stayed Fines
11-12	37	$123,955	$16,450
12-13	98	$41,995	$2,750
13-14	83	$37,125	$1,900
14-15	116	$31,212	$250
15-16	3	$4,300	$550

As with the number of disciplinary actions taken, the number and amount of fines has decreased. Staff explained that this is probably due to the Act having been in place for a few years and the professional population becoming generally more capable and qualified.

The number of fines issued from fiscal year 12-13 through fiscal year 14-15 was very high compared to the other fiscal years examined for this sunset review. The amount of fines has generally decreased because the violations have become less egregious. The outlier is fiscal year 14-15. The number of fines increased but the amount per fine decreased. This is due to the aforementioned continuing education audits and subsequent fines for being out of compliance.

Though company registration is undertaken through the NMLS, the Board can discipline a company for the following:

- Acting without proper registration,
- Not maintaining documents as prescribed by the Board,
- Acting through unlicensed MLOs, and
- Engaging in non-compliant, false or deceptive advertisements.

The Division reported no actions against registered companies during the period examined for this sunset review.

Collateral Consequences – Criminal Convictions

Section 24-34-104(6)(b)(IX), C.R.S., requires Colorado Office of Policy, Research, and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or registrants based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

The SAFE Act does not allow a person to be licensed who has committed a felony within the last seven years. Notwithstanding, given the consequences of sharing sensitive

financial information with an MLO, the Board reviews all convictions, pleas of guilt or nolo contendere for all crimes, to consider the appropriateness of that person holding a license.

The Division began tracking disqualifications founded on criminal history in December 2016. Licenses were denied in two cases. Because the Board considers the ramifications of the criminal history on a case by case basis the reasons for denial were not solely regarding the criminal history. One was denied for concealing facts from the Board and the other was denied because the applicant was on active probation with no evidence of rehabilitation.

Analysis and Recommendations

Recommendation 1 – Continue the Mortgage Loan Originator Licensing and Mortgage Company Registration Act for 11 years, until 2029

The federal government plays a major role in regulating the mortgage industry and individual Mortgage Loan Originators (MLOs). The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) required states to regulate MLOs by 2009. Colorado's licensing regime is contained in the Mortgage Loan Originator Licensing and Mortgage Company Registration Act (Act). The SAFE Act put in place standards for regulating MLOs. According to the SAFE Act, regardless of what state or in what type of lending institution they are employed, all MLOs and loan officers must be registered with the Nationwide Mortgage Licensing System and Registry (NMLS). All registrants must submit fingerprints to the NMLS for a Federal Bureau of Investigation criminal history check, among other requirements.

The SAFE Act also dictates that state licensure programs include: a written test, pre-license education, annual continuing education, and a financial responsibility provision satisfied by either a net worth, surety bond, or recovery fund specification.

While the SAFE Act is the major law governing MLOs, the Fair Housing Act, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Home Equity Loan Consumer Protection Act of 1988, and the Equal Credit Opportunity Act all play roles in mortgage regulation and as a result, in MLO regulation.

Much of this regulation, and certainly the SAFE Act, was prompted by the collapse of a segment of the mortgage industry and the subsequent bailout of many financial institutions during the first decade of this century. Regulation of MLOs was virtually nonexistent prior to the collapse and resulting recession. Because of the financial hardships suffered by Americans that were driven, in part, by dishonest MLOs, regulation became necessary to protect the health, safety, and welfare of consumers. The Act embodies the protections mandated in federal law to protect Colorado residents. The licensing requirements imposed by regulation do protect consumers.

Nonetheless, because the requirement to license MLOs is dictated by the federal government it is important to address the question, "Why is state regulation necessary?" The second statutory criterion that guides sunset review analysis reads:

> 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.

The federal government, through the SAFE Act and the Consumer Financial Protection Bureau (CFPB), the agency charged with implementing the SAFE Act, directs that states establish a licensing system. All states have complied with that dictate so CFPB has

taken no steps to implement any licensing programs. Further, the CFPB has no licensing infrastructure in place to implement licensing if a state was out of compliance. Consequently, if Colorado were to no longer comply with the SAFE Act, presumably, the CFPB would have to establish a licensing regime. Because there is no infrastructure in place, it could take a considerable amount of time. During that time a consumer would not be able to get a loan through a broker-type MLO, only through a registered loan officer at a financial institution. Recall that according to federal law, an MLO must be licensed to operate and that the registered loan officers are exempt from licensing. Relying on the CFPB to regulate would in effect abolish the profession during the interim.

The NMLS is not a regulatory option because it is merely a database that stores the information the SAFE Act orders it to store. There is some duplication of information between the state's database and the NMLS. The Colorado Division of Real Estate (Division) appears to be working to eliminate the duplication and to rely more on NMLS data.

Based on this information, state regulation is necessary. If the CFPB is not capable of regulating at the local level and yet there is a requirement that MLOs be licensed, there would be far fewer options and competition in the marketplace if Colorado ceased regulation.

Because it is necessary to license MLOs to protect public health, safety, and welfare, and because the federal government is not willing or able to take on the tasks necessary to fulfill licensing requirements it has mandated, it is necessary for Colorado to satisfy those requirements. Therefore, the General Assembly should continue the Act for 11 years, until 2029.

Recommendation 2 – Amend the Act such that the Board of Mortgage Loan Originators has 60 days to issue a license after all documentation, including any supplementary information, has been received.

Section 12-61-903(7), Colorado Revised Statutes (C.R.S.), directs that the Colorado Board of Mortgage Loan Originators (Board) must issue a license within 60 days of receiving licensing information. Meeting this deadline is typically not an issue. Division staff estimated that 95 percent of licenses are issued within five business days. The deadline becomes difficult to meet when an applicant's background information demands more scrutiny and investigation.

In the majority of cases, those in which there are no questions or concerns regarding an applicant's qualifications, Division staff is empowered by the Board to issue a license to the applicant. If there are any questions concerning the qualifications, the Board makes the decision to license or not to license, rather than the Division staff. Characteristically, those issues arise because of the criminal history check to which each applicant must submit. When there is an issue, Division investigators typically will perform a more in-depth investigation prior to sending the application to the Board for review.

Still, the Board does not have a workload that demands that it should meet more than every other month. Even meeting every other month, the meetings typically do not last the entire day.

Consider this hypothetical situation. The Division receives completed application materials two weeks prior to a Board meeting. While processing the application, which staff states typically takes five business days, staff uncovers an issue that requires more investigation. That issue must be resolved within a week in order to make it onto the Board's upcoming agenda. The flow of information back to the Division can be affected by the type of investigation, the motivation of the applicant, or how motivated, or busy, an outside organization from which the Division needs a response may be. How promptly the Division receives needed information is largely out of its control. If the case does not make it onto the Board's agenda for that meeting, there is no way to issue the license within 60 days of the completed application because the Board will not meet again for two months.

A sample of cases indicates that it takes an average of 45 days to investigate the applications in which there is an issue. This would fall within the 60-day window. However, because of the Board's meeting schedule, the approval is stretched to 71 days. When that occurs, the Board is out of compliance with the Act.

Noncompliance becomes an issue if the Board ultimately denies a license. If that decision is appealed, being out of compliance opens the door for the appellant to claim that he or she should be licensed because the Board exceeded the 60-day limit. The Division maintains that the application packet is not complete and the 60-day clock does not start until the all of the necessary information, including supplementary information, has been obtained by the Board. However, that is not explicit in the Act. If a person who the Board deems unqualified to perform as an MLO becomes licensed because of a strict interpretation of the Act, the health, safety, and welfare of the public is at risk.

There are two obvious solutions to this problem: extend the 60-day limit, or explicitly start the clock after all supplementary material necessary to make a licensing decision has been received. Assuming there is a valid reason for this 60-day limit to be in the Act, to keep it in place and still solve the administrative problem, the General Assembly should make the latter solution explicit in the Act. Therefore, the General Assembly should amend the Act such that the Board has 60 days to issue a license after all documentation, including any supplementary information, has been received.

Recommendation 3 – Amend the SAFE Act education standards into the Act.

The SAFE Act mandates that MLOs must complete 20 hours of NMLS-approved education to be registered with the NMLS. Those 20 hours must include: [72]

- 3 hours of federal law,
- 3 hours of ethics,
- 2 hours of non-traditional mortgage lending, and
- 12 hours of undefined education.

The Act requires that an:

> applicant for initial licensing as a mortgage loan originator must have satisfactorily completed a mortgage lending fundamentals course approved by the Board and consisting of at least nine hours of instruction in subjects related to mortgage lending.[73]

The Board also requires that an applicant must complete two hours of Colorado specific pre-licensing education.[74] Because the Act has specific language that defines education, some applicants infer that the requirements are in addition to the SAFE Act requirements. That is not the case. The hours overlap. The Board allows for the Colorado requirements to go toward fulfilling the "undefined education" requirement of the SAFE Act. This is confusing to applicants and creates administrative inefficiencies.

To clarify these misunderstandings, the Act should specifically adopt the SAFE Act educational requirements as approved by the NMLS, and the Division will then merely verify in the NMLS database that the state-specific requirements have been completed. This will eliminate any confusion by applicants, make program administration more efficient, and reduce the regulatory burden placed on the applicants. Adoption of this recommendation means that the NMLS will keep track of all educational credits and the Division will merely verify completion via the NMLS website.

Therefore, the General Assembly should amend the SAFE Act education standards into the Act.

[72] NMLS Resource Center. Education. Retrieved July 17, 2017, from http://mortgage.nationwidelicensingsystem.org/profreq/education/Pages/default.aspx
[73] § 12-61-903(3)(a), C.R.S.
[74] 4 CCR 725-3, Mortgage Loan Originators and Mortgage Companies Rule 2.1- D-1

Recommendation 4 – Amend the SAFE Act standards for convictions into the Act.

The SAFE Act prohibits a person from holding a license if he or she has been convicted of any felony within the past seven years or any felony at any time, which involves fraud, dishonesty, a breach of trust, or money laundering.[75] Unless an applicant is in compliance with this provision, he or she is unable to register with the NMLS and, consequently, cannot be licensed in Colorado.

The Act has different standards. If a person has been convicted or plead guilty or *nolo contendre* to similar fiduciary-oriented crimes preceding his or her *application* or a felony seven years preceding his or her *application*, a license can be denied.[76] The application appears to provide a point of distinction.

The argument has been made that a Colorado licensed MLO cannot have his or her license revoked for committing such crimes post-licensing, or more specifically post-application. This is simply not the case because of SAFE Act provisions. The conflicting standards between the Act and the SAFE Act confuse applicants and licensees. In this case the federal law standard preempts the state standard.

To remove inconsistencies in between the SAFE Act and the Act, the General Assembly should adopt the SAFE Act standards for convictions.

Recommendation 5 – Allocate one of the three MLO-assigned Board seats to a representative from a small, Colorado-based MLO operation.

The Board has five Governor-appointed members. Three of those members are mandated to be MLOs. The three members who represent the MLO community all come from large firms with a presence in multiple locations and/or states, and have since the inception of the Board. However, not all MLOs work in that type of firm. Some operations are one-person, sole-proprietor offices. While the majority of MLOs do work for large firms, a significant number of licensees do not.

People who work in the smaller, more entrepreneurial offices have different perspectives about how the mortgage business operates. This perspective can be valuable to the Board when it deliberates on issues. The General Assembly should consider this segment of the professional population and allocate one of the three MLO-assigned Board seats to a representative of a small, Colorado-based MLO operation.

[75] 12 USC § 5104(b)(2)
[76] § 12-61-905(1.5), C.R.S.