

## **Position Statement – MLO 1.4 – Mortgage Loan Originator and Mortgage Company Exemptions (revised 09/18/2013)**

The Board of Mortgage Loan Originators has reissued this position statement to provide guidance for all individuals and entities identified under the exemption portion of the Mortgage Loan Originator Licensing and Mortgage Company Registration Act (the “Act”); specifically section 12-10-709, C.R.S., and federal regulations regarding seller financing.

### State specific exemption for real estate brokers:

The Colorado General Assembly passed two bills in 2013 concerning the regulation of mortgage loan originators with new language affecting the exemption portion of the Act. Section 12-10-709, C.R.S., defines all individuals and entities that are exempt or otherwise excused from complying with licensure and registration standards outlined by the Act.

The first bill, SB 13-118, added exemption language for real estate brokers representing persons providing seller financing for the sale of no more than three residential properties in any twelve month period. Section 12-10-709(1)(j), C.R.S., now includes as exempt:

“A person licensed under part 1 of this article who represents a person, estate, or trust providing mortgage financing under paragraph (b) of the subsection (1).”

The Board finds it necessary to clarify in what capacity one is acting when representing a person, estate, or trust that is offering seller financing. The Board has taken the position that “represents” denotes in the capacity of a real estate broker as set forth in section 12-10-201(6)(a), C.R.S. As such, persons licensed under part 1 are limited to the real estate brokerage activities as defined in section 12-10-702(20), C.R.S., “Acting in the capacity of a real estate broker” does not include the offering or negotiation of terms and conditions of any proposed financing arrangements with the seller. That activity would fall under the purview of mortgage origination.

Additionally, the sunset bill for the mortgage loan originators program, SB 13-156, deleted subsection (m) of former 12-61-911(1), C.R.S., thereby removing any uncertainties as to the plain and straightforward intent to exempt all individuals and entities identified in sections 12-10-709(1)(b) through (j), C.R.S., from all sections, provisions, and requirements of the Act.

### Compliance with federal requirements:

There have been some questions with regard to SB13-118, and how the new exemption created for licensed real estate brokers reconciles with federal licensure requirements. The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (“S.A.F.E. Act”) sets minimum national licensing standards for mortgage loan originators and requires that all mortgage loan originators be registered on the National Mortgage Licensing System and Registry (“NMLS”). The SAFE Act defines “loan originator” as an individual who (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain. This regulation also describes activities in the residential mortgage process that are excluded from the definition of “loan originator.” Activities that are excluded include: those that pertain to administrative or clerical tasks; real estate brokerage activities by individuals licensed or registered by a state to undertake real estate brokerage activities, unless that person is compensated by a loan originator, loan processing or underwriting under the direction and supervision of a state-licensed loan originator or registered loan originator; and those individuals solely involved in extensions of credit relating to timeshare plans. Care should be taken by anyone licensed under part 1 as not to perform any acts that may require licensure under federal licensing requirements.