

INTERPRETATIVE OPINION NO. 2

LOAN PROCESSORS AND UNDERWRITERS LICENSING REQUIREMENTS

The Nebraska Department of Banking and Finance (“Department”) hereby issues this Interpretative Opinion regarding the licensing requirements for Loan Processors and Underwriters under the Residential Mortgage Licensing Act.

Neb. Rev. Stat. § 45-702(14) defines the term “loan processor or underwriter” as “an individual who (a) performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under the Residential Mortgage Licensing Act or Nebraska Installment Loan Act and (b) does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.”

The Department interprets the term “employee” in Section 45-702(14) to mean an individual whose manner and means of performance of work are subject to the right of control of a licensed or registered mortgage banker or installment loan company and whose compensation for federal tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

This definition is consistent with the definition contained in the United States Department of Housing and Urban Development’s (“HUD”) final rule implementing the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (“SAFE Act”). 12 CFR 1008.23. It is also consistent with Nebraska law concerning the definition of employee in other contexts. *See generally, Williams v. Allstate Indemnity Corp.*, 266 Neb. 794, 669 N.W.2nd 455 (1995).

Neb. Rev. Stat. § 45-727(3) provides that an “independent agent shall not engage in the activities as a loan processor or underwriter unless such independent agent loan processor or underwriter obtains and maintains a [mortgage loan originator license.]” The Department interprets the term “independent agent” in Section 45-727 to mean any individual who does not meet the definition of employee as outlined above.

The Department interprets Section 45-702(14) to also require that the loan processor or underwriter be subject to the supervision of a licensed or registered mortgage loan originator. This interpretation is consistent with Section 1503 of the SAFE Act and with HUD’s final rules.

The Department notes that the licensed or registered loan originator does not necessarily have to be the loan processor’s direct or immediate supervisor. However, the SAFE Act’s usage of functional terms (i.e. “at the direction of and subject to the supervision of [a loan originator]”) make it clear that there must be an actual connection between the licensed or registered loan originator’s direction, supervision, and instruction and the loan processor or underwriters’ performance, as opposed to a nominal relationship on an organizational chart. A single licensed loan originator may be able to effectively direct, supervise, and instruct multiple loan processors or underwriters depending upon all the facts and circumstances. 76 FR 38486; *See also*

Appendix C to 12 CFR Part 108 (provides additional interpretations concerning independent contractor loan processors and underwriters).

Therefore, an individual who conducts clerical and support duties, as defined in Section 45-702(4), who is an employee of a licensed or registered mortgage banker or installment loan company, and who is supervised by a licensed or registered mortgage loan originator is not required to obtain a mortgage loan originator license to act as a loan processor or underwriters. All individuals who do not meet these requirements must be licensed as mortgage loan originators in order to conduct loan processing and underwriting activities.

EFFECTIVE DATE: April 16, 2012