FLORIDA OFFICE OF FINANCIAL REGULATION
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August 17, 2010

Re: Licensing Obligations for Individuals Acting as In-House Underwriters

Dear Sir or Madam:

The Office of Financial Regulation (OFR) provides the following clarification to substantially the following question:

> Whether individuals employed by Florida-licensed mortgage lenders who exclusively conduct underwriting activities for their employer will be required to be licensed as "mortgage loan originators" on October 1, 2010?

For purposes of this analysis, an underwriter "performs analysis of a loan to determine whether it meets his or her employer's minimum criteria for making such loan and, subsequent to such determination, will render a decision as to whether his or her employer will make such loan." This type of underwriter is a W-2 employee of a mortgage lender licensed with the OFR who would underwrite retail or wholesale residential mortgage loans exclusively for his or her employer. Additionally, these underwriters will have minimal interaction with consumers, if any, as most interaction will involve loan processors who are licensed as loan originators under Florida law.

In 2009, the Governor of Florida signed into law Senate Bill 2226, which substantially amended Chapter 494, Florida Statutes, to bring Florida into compliance with the federal S.A.F.E. Act. Effective October 1, 2010, the definition of "loan originator" means:

> [A]n individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, processes a mortgage loan application, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. *The term includes the activities of a loan originator as that term is defined in the S.A.F.E. Mortgage Licensing Act of 2008, and an individual acting as a loan originator pursuant to that definition is acting as a loan originator for purposes of this definition.* The term does not include an employee of a mortgage broker or mortgage lender who performs only administrative or clerical tasks, including quoting available interest rates, physically handling a completed application form, or transmitting a completed form to a lender on behalf of a prospective borrower.

FINANCIAL SERVICES COMMISSION

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Our mission is to protect the citizens of Florida by carrying out the banking, securities and financial laws of the state efficiently and effectively and to provide regulation of business that promotes the sound growth and development of Florida's economy.

Section 494.001(14), Fla. Stat. (effective October 1, 2010) (emphasis added).

The Florida definition of "loan originator" explicitly includes "processes a mortgage loan application," and thus a loan processor, regardless of his or her status as an employee or contractor, is required to obtain a license as a loan originator with the OFR this October.

The Florida definition of "loan originator," however, does not explicitly include *underwriting*. Section 1503(4) of the S.A.F.E. Act, however, provides that an underwriter "means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of (i) a State-licensed loan originator; or (ii) a registered loan originator." Section 1504(b) of the S.A.F.E. Act further states that "supervised" underwriters (who do not represent to the public that they perform loan origination activities) are not required to obtain loan originator licenses, while independent contractors "may not engage in residential mortgage loan origination activities as a[n]…underwriter unless such independent contractor is a State-licensed loan originator."

Thus, with regard to the specific facts above, underwriters who are W-2 employees of licensed mortgage lenders) are not required to obtain loan originator licenses with the OFR. In addition, if these underwriters intend to underwrite exclusively for one employer, they would not be subject to HB 1281's requirement that "loan processors" file declarations of intent to engage solely in loan processing in order to contract with multiple mortgage brokers or mortgage lenders. Please keep in mind that in-house underwriters that work for a licensed lender *must* be supervised by a licensed loan originator in order to comply with the S.A.F.E. Act and Chapter 494, Florida Statutes.

Finally, please note that this response is the informal opinion of the undersigned and is based only on the information that has been provided, and it is not binding upon the OFR. Any additional information or specific authorities that may be relevant to this analysis is welcomed and will be taken into consideration. If you would like to request an opinion on a transaction that would be legally binding upon the OFR, please review Section 120.565, Florida Statutes, and the applicable rules from the Florida Administrative Code for the procedures to request a declaratory statement. If you have any questions regarding this opinion letter, please do not hesitate to contact me at (850) 410-9896.

Sincerely,

/s/

Jenny S. Kim
Assistant General Counsel