



# STATE OF INDIANA

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### **Joint Guidelines of the Securities Division and Department of Financial Institutions on Determination of Agency to Regulate Mortgage Professionals Issued in Compliance with § 37 of HEA 1359**

**September 1, 2008**

As required by § 37 of HEA 1359 (P.L. 145-2008), the Securities Commissioner and the Director of the Department of Financial Institutions issue the following guidelines addressing the appropriate agency to oversee the regulation of certain persons within the mortgage industry.

**1. Question:**

What mortgage professionals are regulated by the Securities Division of the Indiana Secretary of State's office (the "Securities Division")?

**Answer:**

Under IC 23-2-5, the Securities Division licenses and regulates loan brokers. The Securities Division also registers loan originators and principal managers who work on behalf of the licensed loan brokers.

**2. Question:**

What is a loan broker?

**Answer:**

A "loan broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring, a loan from a third party or any other person, whether or not the person seeking the loan actually obtains the loan. IC 23-2-5-3(d).

**3. Question:**

Who is excluded from the definition of loan broker?

**Answer:**

The term "loan broker" does not include:

- (1) any supervised financial organization (as defined in IC 24-4.5-1-301(20)), including a bank, savings bank, trust company, savings association, or credit union;
- (2) any other financial institution that is:
  - (A) regulated by any agency of the United States or any state; and
  - (B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

- (3) any insurance company;
- (4) any person arranging financing for the sale of the person's product; or
- (5) a creditor that is licensed under IC 24-4.4-2-402.

**4. Question:**

What mortgage professionals are regulated by the Department of Financial Institutions (the "Department")?

**Answer:**

There are two types of licenses issued by the Department for persons engaged in mortgage lending:

First, under the First Lien Mortgage Lending Act ("FLMLA") (effective on January 1, 2009), a person who is regularly engaged in Indiana as a creditor in first lien mortgage transactions, *and* who is funding the loan with its own assets or its own established line of credit, must first obtain a license from the Department. IC 24-4.4-2-401. This person is referred to as a "mortgage lender" throughout this document.

Second, under the Uniform Consumer Credit Code ("UCCC"), a person who is regularly engaged in Indiana in making consumer loans, taking assignments of consumer loans or undertaking direct collection of payments from, or enforcement of rights against, debtors arising from consumer loans, must first obtain a license from the Department. Second lien mortgage loans are included in the definition of a "consumer loan" under the UCCC.

If a person is regularly engaged as a lender for both first and second lien mortgage loans, it is required to be licensed by the Department under both the FLMLA and the UCCC.

**5. Question:**

What is the difference between a loan broker, licensed by the Securities Division, and a mortgage lender, licensed by the Department?

**Answer:**

With respect to first lien mortgage transactions<sup>1</sup>, the key difference between a loan broker and a mortgage lender is that the mortgage lender is the named creditor on the loan *and* funds the loan through the use of lender's own funds or established line of credit. A loan broker may or may not close the loan in its name but does not provide the funding from its own funds or its own established line of credit.

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<sup>1</sup> Note that a person regularly engaged as the named creditor in a second lien mortgage transaction must be licensed under the UCCC, regardless of the funding source of the loan. The Department contemplates seeking a legislative amendment to the UCCC in the 2009 session to incorporate the "tablefunded" definition (see 6. above) currently included in the First Lien Mortgage Lending Act.