SECRETARY OF STATE
STATE OF INDIANA
SECURITIES DIVISION

Todd Rokita
Secretary of State

Chris Naylor
Securities Commissioner

TO: Licensed Loan Brokers, Exempt Loan Brokers, Principal Managers, & Originators
FROM: Office of the Indiana Secretary of State, Securities Division
DATE: May 1, 2008
RE: Indiana House Enrolled Act 1359

Public Law 145-2008 (House Enrolled Act 1359) ("HEA 1359") was signed by the Governor on March 24, 2008. HEA 1359 makes several revisions and clarifications to the Indiana Loan Broker Act ("Act") (Ind. Code 23-2-5). The revisions contained in HEA 1359 will affect all loan brokers that are either licensed or have claimed an exemption under the Indiana Loan Broker Act. You may access a copy of HEA 1359 from the Indiana Secretary of State, Securities Division's ("Division") website: www.sos.IN.gov.

The following explanation summarizes some of the provisions contained in HEA 1359. This notice also includes some additional reminders of upcoming deadlines and Division policies. This summary, however, does not cover all provisions of HEA 1359. You may wish to consult with private counsel with respect to how these changes may apply to your specific situation.

Exemptions

The following exemptions are removed from Section 19(a) of the Indiana Loan Broker Act under HEA 1359.

- A person that sells and services a loan for the Federal National Mortgage Association or the Federal Home Loan Mortgage Association.
- A person that issues securities backed by the Government National Mortgage Association.
- A person that makes loans insured by the United States Department of Housing and Urban Development or the United States Department of Agriculture Rural Housing Service.
- A person that acts as a supervised lender or non-supervised automatic lender of the United States Department of Veterans Affairs.
- A person that acts as a correspondent of loans insured by the United States Department of Housing and Urban Development, if the person closes at least twenty-five (25) such insured loans in Indiana during each calendar year.
- Any person licensed as a real estate broker or salesperson under Indiana Code 25-34.1 to the extent that the person is rendering loan relate services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.

Loan brokers that currently operate under one of the above-referenced exemptions in the State of Indiana are to become licensed with either the Indiana Securities Division or the Department of Financial Institutions, not later than January 1, 2009 in accordance with Public Law 145-2008 and Indiana Administrative Order 08-0058 AO.

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Criminal Background Checks
Indiana Code § 23-2-5-5(k) has been amended to require the equitable owner(s), director(s), manager(s), or officers of a loan broker or loan broker license applicant, and an applicant for registration as a principal manager or originator to submit fingerprints for a national criminal history background check by the Federal Bureau of Investigation.

Privacy Requirements
In an effort to aid in the protection of valuable personal information, the Indiana Loan Broker Act was amended to require loan brokers, principal managers, and originators to comply with strict requirements to ensure the protection and privacy of all personal information utilized during the loan process.

Definitions:

- *Personal information* includes any of the following:
  - An individual's first and last name or first initial and last name, Social Security Number, driver's license number, state identification card number, and credit card number;
  - A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account.
  - An individual's address, telephone number; and information pertaining to an individual's: income or other compensation; credit history; credit score; assets; liabilities; or employment history.

Disposal of Personal Information – Indiana Code § 23-2-5-18(d) provides that loan brokers, principal managers, and originators must not dispose of unencrypted, unredacted personal information without first shredding, incinerating, mutilating, erasing, or otherwise rending the information illegible or unusable.

Prohibited Acts – Indiana Code § 23-2-5-20(a) prohibits a person in connection with a contract for the services of a loan broker from either directly or indirectly:

- Knowingly releasing or disclosing the unencrypted, unredacted personal information of a borrower or prospective borrower, unless authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:
  - The personal information is:
    - Included on an application form or another form; or
    - Transmitted as part of an application process or an enrollment process.
  - The personal information is used to obtain a consumer report for an applicant for credit; or
  - The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.
- Engaging in any reckless or negligent activities allowing the release or disclosure of the unencrypted, unredacted personal information of a borrower or prospective borrower. (**NOTE:** *this includes disposing of unencrypted, unredacted personal information without first rendering the borrower's or prospective borrower's personal information illegible or unusable in accordance with Indiana Code § 23-2-5-18(d).)*

Disclosure Requirement – If the security of any records maintained by a loan broker under Indiana Code § 23-2-5-18(a) is breached, the loan broker is subject to the disclosure requirements contained

in Indiana Code 24-4.9-3. (*A copy of Indiana Code 24-4.9-3 may be accessed here: http://www.in.gov/legislative/ic/code/title24/ar4.9/ch3.html)*

Penalty – Any person that violates the Act's privacy requirements contained in Indiana Code § 23-2-5-20(a) may be subject to a civil penalty up to $10,000, liable for damages, interest, and attorney's fees, voidance of contract, and/or charged with a Class D Felony. – See Indiana Code § 23-2-5-20(b).

Prohibited Acts

Indiana Code § 23-2-5-20(a) has been amended to prohibit the following actions in connection with a contract for the services of a loan broker. A person may not either directly or indirectly:

- Receive any funds if the person knows that the funds were generated as a result of a fraudulent act;
- File or cause to be filed with a county recorder any document that the person knows to:
  - Contain a misstatement or an untrue statement of a material fact; or
  - Omit a statement of material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.

Penalty – Any person that engages in any action prohibited by Indiana Code § 23-2-5-20(a) may be subject to a civil penalty up to $10,000, liable for damages, interest, and attorney's fees, voidance of contract, and/or charged with a Class D Felony. – See Indiana Code § 23-2-5-20(b).

BE ADVISED THAT THIS IS NOT A COMPLETE ANALYSIS OF HOUSE ENROLLED ACT 1359.

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Important Reminders

Principal Manager Requirement – All loan brokers that were licensed under the Indiana Loan Broker Act prior to July 1, 2007, must have a registered principal manager for the principal office location and each branch office location that is either located in, or engaging in origination activities in the State of Indiana not later than July 1, 2008.

The Act defines a principal manager as an individual that is principally responsible for the supervision and management of the employees and business affairs of a licensee at a specific location and has at least three (3) years of experience, acceptable to the Commissioner in the loan brokerage business or financial services. (*See Ind. Code 23-2-5-3(l)*). (***Note:*** *A principal manager may not register as the principal manager for more than one (1) office location.)*

Failure to comply with this requirement by July 1, 2008, may result in the loan broker license being revoked or suspended.

Education Requirements
In July 2007, the continuing education requirements for originators and principal managers changed to six (6) hours of approved continuing education annually (*See Indiana Code § 23-2-5-21(a)).* Any originator or principal manager that was registered with the Division prior to January 1, 2007, should have completed at least six (6) hours of continuing education annually starting in 2007. If you did not complete at least six (6) hours of approved continuing education in 2007, you must show before December 31, 2008, the completion of at least twelve (12) hours of approved continuing education. In order for the originator or principal manager to meet the education requirements, they must complete six (6) hours of continuing education annually beginning in 2009.

If an originator or a principal manager fails to maintain their education requirements in accordance with Indiana Code § 23-2-5-21(a), their registration may be terminated, and he or she will have to apply for an initial registration, requiring the applicant to:

- Submit a new properly completed Application for Registration as a Principal Manager or an Originator;
- Show the completion of twenty-four (24) hours of live education within the previous twenty-four (24) months of the date of submission of the application;
- Show that the applicant passed the required examination within the previous twelve (12) months of the date of submission of the application; and
- Undergo a new federal criminal background check.

Registrant's Employment Status
Indiana Administrative Code 710 IAC 1-22-1(d) requires that a principal manager or an originator be an employee of the licensed loan broker. Under no circumstances may an originator or a principal manager be an independent contractor of a licensed loan broker. When conducting an examination or investigation of a licensed loan broker, the Division will take into consideration whether an employee is paid by means of a 1099, as it may be one (1) factor indicating a violation of the Indiana Loan Broker Act.

If you have questions regarding the revisions to the Indiana Loan Broker Act, you may contact Josh Wise, Loan Broker Examiner by email at ejwise@sos.in.gov or by telephone at 317.232.6681. You may also wish to consult private counsel as the Division is not authorized to provide legal advice.