

**STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

**Bulletin 2010-13-CF**

**In the matter of**

**Licensure and Registration of  
Mortgage Loan Modification Providers**

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**Issued and entered  
this 25<sup>th</sup> day of June 2010  
By Ken Ross  
Commissioner**

The purpose of this bulletin is to clarify the applicability of the Mortgage Brokers, Lenders, and Servicers Licensing Act, 1987 PA 173, MCL 445.1651 *et seq.*, as amended (MBLSLA), the Secondary Mortgage Loan Act, 1981 PA 125, MCL 493.51 *et seq.*, as amended (SMLA), and the Credit Services Protection Act, 1994 PA 160, MCL 445.1821 *et seq.*, as amended (CSPA), to mortgage loan modification.

**Overview**

As mortgage loan modification has grown, the Office of Financial and Insurance Regulation has been asked to clarify whether a person providing mortgage loan modification services is required to be licensed or registered as a mortgage broker, lender, servicer, or loan officer under the MBLSLA or SMLA, or if mortgage loan modification is regulated by another Michigan statute.

Beginning July 31, 2010, an individual providing mortgage loan modification services will be required to be licensed as a "mortgage loan originator" under the Mortgage Loan Originator Licensing Act, 2009 PA 75, MCL 493.131 *et seq.* (MLOLA), unless that individual is otherwise authorized to provide mortgage loan modification services under Section 5(5) of the MLOLA, MCL 493.135(5).

This bulletin addresses only those mortgage loan modification services rendered pursuant to the MBLSLA and/or the SMLA. As used in this bulletin, the term "mortgage loan modification" includes only the modification of an existing

mortgage loan. The term does not include the making of a new mortgage or mortgage note or the extension of new monies to a consumer.

Working on behalf of a consumer, a mortgage loan modification provider typically works with the holder of the consumer's mortgage loan to change one or more of the terms (interest rate, amount of payments, number of payments, deferment of payments, etc.) of an existing mortgage loan agreement. The purpose of a loan modification is to make the mortgage loan payment more affordable for the consumer.

### **Authority under the MBLSLA and the SMLA**

The Commissioner is responsible for the implementation and administration of the MBLSLA and the SMLA. The MBLSLA and the SMLA specifically address the origination, brokering, making, and servicing of a mortgage loan. They are very similar in defining a mortgage loan and the activities of a mortgage broker, mortgage lender, and mortgage servicer. The terms origination, brokering, and making are used in relation to a new mortgage loan. The term servicing is used in relation to an existing mortgage loan. The MBLSLA and the SMLA do not specifically define, use, or contemplate the regulation of mortgage loan modification activity.

Pertinent definitions in Section 1a of the MBLSLA, MCL 445.1651a (similar secondary mortgage loan definitions can be found in MCL 493.51), provide:

(o) "Mortgage broker" means a person who, directly or indirectly, does 1 or both of the following:

(i) Serves or offers to serve as an agent for a person in an attempt to obtain a mortgage loan.

(ii) Serves or offers to serve as an agent for a person who makes or offers to make mortgage loans.

(p) "Mortgage lender" means a person who, directly or indirectly, makes or offers to make mortgage loans.

(q) "Mortgage loan" means a loan secured by a first mortgage on real property located in this state and used, or improved for use, as a dwelling and designed for occupancy by 4 or fewer families or a land contract covering real property located in this state used, or improved for use, as a dwelling and designed for occupancy by 4 or fewer families. A mortgage loan does not include a home improvement installment contract under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

(r) "Mortgage servicer" means a person who, directly or indirectly, services or offers to service mortgage loans.

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(y) "Service" means the collection or remittance, or the right or obligation to collect or remit, for a lender, noteowner, noteholder, mortgage servicer, or the licensee's or registrant's own account of 4 or more installment payments of the principal, interest, or an amount placed in escrow under a mortgage loan, mortgage servicing agreement, or an agreement with the mortgagor.

### **The Credit Services Protection Act**

The Michigan Attorney General or county prosecutors are responsible for enforcing the provisions of the CSPA. The CSPA regulates the activity of "credit services organizations." The CSPA is not a licensing statute and the Commissioner is not vested with statutory oversight or regulatory authority or responsibility over credit services organizations. Thus, except to the extent necessary and appropriate to regulate OFIR's regulated population, the Commissioner does not oversee the CSPA.

Section 2(b) of the CSPA, MCL 445.1822(b), defines "credit services organizations" to include, but not be limited to, a person who offers to provide advice or assistance regarding foreclosures, serve as an intermediary between a debtor and a creditor, or provide advice or assistance regarding the obtainment of an extension of credit. The CSPA defines "extension of credit" as the right to incur or defer the payment of debt.

Because a mortgage loan modification provider acts as an intermediary between a debtor and creditor, provides advice or assistance regarding the obtainment of an extension of credit, and, oftentimes, provides advice or assistance regarding foreclosures, the activity of a mortgage loan modification provider falls within the definition of "credit services organization" under the CSPA. Accordingly, a person providing mortgage loan modification services or foreclosure assistance is required to comply with the several prohibitions set forth in Section 3 of the CSPA, MCL 445.1823. Among those prohibitions is the ban on charging or receiving any fee or thing of value in advance of completing the service (an up-front fee) and the prohibition against providing any service that is not provided pursuant to a written contract with terms that comply with the CSPA.

To the extent that a licensed or registered individual or entity is brokering or making new mortgage loans in its regular course of business, and not offer[ing] to provide advice or assistance regarding foreclosures, serv[ing] as an intermediary between a debtor and a creditor, or provid[ing] advice or assistance regarding the obtainment of an extension of credit, it is exempt from CSPA requirements.

Information regarding the Credit Services Protection Act can be found on the website of the Michigan Department of Attorney General at [http://www.michigan.gov/ag/0,1607,7-164-34739\\_20942-215058--,00.html](http://www.michigan.gov/ag/0,1607,7-164-34739_20942-215058--,00.html).

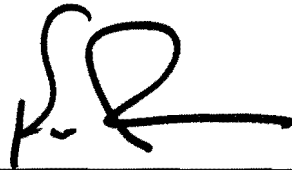
### **Conclusion**

An individual or entity that only provides mortgage loan modification services is not required to be licensed or registered as a mortgage broker, lender, servicer, or loan officer pursuant to either the MBLSLA or the SMLA. However, the mortgage loan modification provider must comply with the CSPA, which requires a written contract and prohibits the charging of up-front fees.

Individuals and entities that are licensed or registered under the MBLSLA or the SMLA must comply with the CSPA when providing mortgage loan modification services. This includes, but is not limited to, the requirement that a written contract be provided and that up-front fees cannot be charged. When charging fees, a licensed or registered mortgage broker, lender, or servicer may only charge those fees that are authorized under the MBLSLA or the SMLA in relation to the brokering, lending, or servicing activity that is provided pursuant to the licensing act.

Questions regarding this bulletin should be directed to:

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