

**UTAH RESIDENTIAL MORTGAGE REGULATORY  
COMMISSION MEETING**

Heber M. Wells Building  
Room 210  
9:00 A.M.  
July 7, 2010

**MINUTES**

**STAFF MEMBERS PRESENT**

Deanna Sabey, Division Director  
Mark Fagergren, Director of Licensing and Education  
Jennie Jonsson, Hearing Officer  
Traci Gundersen, Assistant Attorney General  
Marv Everett, Investigator  
Renda Christensen, Board Secretary  
Jan Buchi, Mortgage Education Coordinator  
Jody Colvin, Mortgage License Specialist  
Jill Childs, Assistant Board Secretary

**COMMISSION MEMBERS PRESENT**

Lance Miller, Chair  
Maralee Jensen, Vice Chair  
Rodney "Butch" Dailey, Commissioner  
Brigg Lewis, Commissioner

**GUESTS**

Ron Duyker  
Chad Ahearn

The meeting on July 7, 2010 of the Utah Residential Mortgage Regulatory Commission began at 9:00 a.m. with Chair Miller conducting.

Commissioner Christensen will be excused from the meeting today.

**PLANNING AND ADMINISTRATIVE MATTERS**

Approval of Minutes – A motion was made to approve the June 2, 2010 minutes as written. Vote: Chair Miller, Yes; Commissioner Dailey, Yes; Commissioner Lewis, Yes. Vice Chair Jensen abstained from voting because she was absent for last months meeting. The motion carries.

## **DIVISION REPORTS**

### **Director's Report – Deanna Sabey**

Director Sabey wanted to make the Commission and public aware of the number of hours the Division has spent on NMLS-related issues for our fiscal year ending on June 30, 2010. The total number of hours spent on NMLS-related issues was 6,273, with no grants or financial help from federal government.

There was a recent publication on June 18, 2010 by the Center for Responsible Lending, entitled "Foreclosures by Race and Ethnicity." Research from January 2007 through 2009 showed there were an estimated 2.5 million foreclosures completed. The vast majority were owner-occupied properties with mortgages originated between 2005 and 2008. A substantial portion of those mortgages originated (approximately 64%) were sub-prime mortgages. However, during those years only 22% of the loans originated were sub-prime. The data also indicates the majority of sub-prime mortgages were given to borrowers of color.

The Dodd-Frank Wall Street Reform and Consumer Protection Act is a substantial document that is 2,015 pages in length. It affects the appraisal industry, mortgage industry, and a large part involves securities. The securities portion covers hedge funds, executive compensation, etc. Director Sabey gave a very brief outline of this Act, and about when it is expected to be passed. Different versions were passed in the House and Senate, and there was a conference report, or basically a confirming report, which puts those things together, and will need to be passed by the Senate and the House. The confirmation has been passed at the House level, and the Senate will take up the bill in mid-July, and it is expected to be signed by the President by the end of July.

The first significant change is a prohibition on steering, which will affect loan originator compensation. The Act states there will be no yield spread premium based on any terms such as any rates that would cause an originator to steer the borrower to particular loans. There will be no payment to brokers based on terms of the loans other than the principal amount of the loan.

There is a new agency being created as a result of this Act, the Consumer Financial Protection Bureau. This will be a mega-agency that controls the financial world.

Changes pertaining specifically to the mortgage industry cover the creditor now having the specific burden of determining whether the consumer has a reasonable ability to repay; no more stated income. There is a safe harbor and refutable presumption provision for qualified mortgages. Qualified mortgage is similar to an "A" paper loan, sub-prime, not high cost, etc. There is, for borrowers, a defense to foreclosure if there is a violation of the anti-steering or ability to repay provision. There are now no pre-payment penalties allowed unless it is a qualified mortgage. A qualified mortgage has a very limited pre-payment of 3%, 2%, 1%, and then falls off after three years.

There needs to be a new disclosure which states anti-deficiency laws so that borrowers will know what the state laws are.

HOPA coverage is expanded. There is an oversight through the Appraisal Subcommittee. AMCs are now being overseen by the Appraisal Subcommittee and regulated by the states. There is increased oversight for appraiser independence.

Increased liability for loan originators now means that those who violate the act will be responsible for either actual damages or three times the total of the gain or compensation to that loan originator, whichever is greater.

Lender must give the consumer a copy of the appraisal upon completion of the appraisal, and at least three days before closing.

A consumer hotline will be established that will have a complaint process on the federal level.

There is a good summary of the Act on at the [www.mbaa.org](http://www.mbaa.org) website which will give a summary of the particular changes to the mortgage industry.

Director Sabey discussed loan modification issues. Just recently (in June), the New York Attorney General's office issued 213 cease and desist letters to companies because of the practices in which they have been engaging. The letters cite charging up-front fees for consulting services; failing to enter into written contracts with homeowners; failing to allow homeowners to cancel their contract without penalties within five business days after signing (in Utah we have a 3-day right of rescission); using deceptive and misleading advertising practices; and using any advertisement designed to give consumers a false impression that the company is affiliated with a government-sponsored program. A new technique that has recently been

used was given after the FTC filed a complaint in U S District Court against an entity, Debt Advocacy Center, which changed its name to Credit Service Alliance Inc., and Credit Law Group. This group started the practice of using what is called forensic audits. They collect an up-front fee from the borrower and compare the documents to give the homeowners the ability to negotiate better with their mortgage companies to get better terms for loan modifications.

The National Association of Mortgage Brokers (NAMB) is refuting the NMLS requirement for call reports. NMLS has stated that companies and individuals must submit mortgage call reports on a quarterly basis. NAMB has sent a letter asking upon what legal basis NMLS is requiring these documents. There is no statutory basis under the SAFE Act to extend the mortgage call report provision to require each mortgage company to submit their quarterly financial statement and a quarterly report to each state on its mortgage activity. This will place a significant burden on small business mortgage companies.

#### **Enforcement Report – Marv Everett**

Mr. Johnson is out of town and will be absent for the meeting today.

In the month of June the Division received 77 complaints; screened 24 complaints; opened 4 cases; closed 10 cases; leaving the total number of cases at 44. Out of the 77 complaints received, 56 are complaints on NMLS issues. Ms. Christensen said these are companies who have sent in documents to NMLS that have not been seen by the Division before now.

There are no stipulations for review.

#### **Education/Licensing Report – Mark Fagergren**

Mr. Fagergren said the May 31 deadline for transition has recently passed, and there were 9,027 individuals and entities that we determined should be transitioning. In the end, 57% of those, or 5,148 individuals, did complete transition. The Division is concerned about the 3,879 licensees who did not transition. We have started to receive calls from some of these individuals saying they have just been made aware of the fact, and what do I do now.

The year-to-date for the number of transition filings (more than one filing is required to transition onto NMLS) is over 9,000 filings submitted. As of June 2, 2010 we had a backlog of 4,009 that needed to be processed. As of yesterday, we had 590 filings still to process. Out of the 590, approximately half of those are incomplete, for example, not having their education

completed, or not passing the exam. By the end of this week, the staff should be caught up with those who have filed complete requests for transitioning. This puts it right on track with what the Division had on its internal planning to have this deadline by May, and at the end of July have the staff caught up. The staff is very talented and dedicated to keep up this pace, and he wouldn't trade them for any staff in the country. This comment brought a round of applause from those in attendance.

As of last month, NMLS has had some quirks with the certification process. Certification is a means whereby you can get credit for an exam or education. It wasn't until June 17<sup>th</sup> that the licensees received an e-mail from NMLS telling them they could certify either their exam or their education. Internally, we made a decision that it was not sufficient time for licensees (less than two weeks) to complete this process. This is the only deadline we have adjusted the chart that was published in the very beginning showing the deadlines. The new deadline is July 29, 2010. We have sent an e-mail about the new deadline, and will send a follow-up e-mail reminding everyone that this deadline is coming and please not to let this deadline go by. Unless they certify, these 5,148 licensees who have transitioned, are throwing away the credit they have earned.

The certification for testing was originally to be January 1, 2005 forward. Previous Director Steinagel and Mr. Fagergren were both on an exam committee and said since our exam started January 1, 2004, that this exam should be counted as of the January 1, 2004 date. Everyone who took the test after January 1, 2004 is able to have that exam credited and not have to retake an NMLS Utah exam.

Ms. Buchi and Ms. Colvin went through all of the records, and submitted a report to NMLS showing there were 4,043 licensees (of the 5,148 who have transitioned) who qualify for certification. This is the most of any state in the country, and so far in the certification process, there are ten states that had tests. Some of these states are Iowa, Louisiana, Michigan, North Carolina, New Jersey, and Washington State. As of June 28, 2010, 46% of our licensees had completed the testing certifications. They only need to respond to the e-mail and pay a \$5.00 fee.

The education certification has been started in 17 states so far who have qualified. Of this number, Utah is the third largest number. Illinois had 4,000+, and North Carolina had 3,792. Utah had 3,517 licensees who qualified for certification of their education. In Utah, we started doing continuing education on February 3, 2004, which required 14 hours to

renew. Since 2004, we have had three cycles of 14 hours. If licensees have at least two cycles of the 14 hours, that would waive taking the 20 hours of education. We have also had licensees since January 1, 2005 who were newly licensed that have been required to take the 20 hours of education. The Division is mainly focusing on licensees who were licensed in Utah before January 1, 2005. If they have taken two cycles of 14 continuing education hours, they qualify (which would be the 3,517). As of June 28, 2010, only 41 % of those individuals have responded. If they don't respond, they will have to take the 20 hours of education or pass the test again.

The certification deadline is July 29, 2010. From this point forward, the next big hurdle will be renewal which will start November 1, 2010 until December 31, 2010. During the renewal process period, licensees are not able to update the information shown in NMLS. The window is closed. Between now and the end of October, it will be the time for a company or individual to update their information. Many of our licensees use the renewal process to update their information, and this is not going to be possible in NMLS.

Another point on renewal is that our staff will be checking to see if everyone has 14 hours of CE, which can be NMLS or Utah. Even though they certify their 20 hours, they still will need the 14 hours of CE. If you license after October 1, 2010, you will only need 8 hours of CE.

Mr. Fagergren mentioned branch office registrations. We have had a brief article in the newsletter talking about this, and it will be a requirement for renewal this coming November. Every branch will have to have a Branch Lending Manager (BLM) designated for that company to manage it. There have been some concerns regarding compliance. A typical letter sent to the Division states that, with the implementation of the BLM that will be coming, the Division needs to clearly identify what constitutes a branch. As a wholesaler, this person sees many examples of what he feels should be a branch, but the broker or lender does not license the location as a branch, nor do they notify FHA. To this person, a branch is any business location where a customer can or does meet with the loan officer. If you lease or rent space for that purpose, it is considered a branch. The person writing the letter listed five of the largest companies, and mentioned there are many branches that are not registered with the Division, or with FHA. Mr. Fagergren mentioned that this is how the Division defines a branch; it isn't just an independent place to meet and do paper work.

As a point of clarification, a parent company can have multiple DBAs, and the DBA would not be required to have a BLM. This is accurate if they are all

at the parent company location. If a Salt Lake company has 7 DBAs, mortgage originators can do loans for the parent company or any DBA as long as they are that location. However, if you had a DBA that has a different location, it is the Division's view (with the support of NMLS), that this branch would need a Branch Lending Manager.

Mr. Fagergren reported last month an exam meeting was held with Pearson Vue to review every question in the PLM test. After this meeting, it was the belief of the exam committee that instead of having two separate components of the test (national and state); there should be a single exam with more state-specific questions. Mr. Fagergren said they are hoping the changes to the exam will take place in October of this year.

The Division is considering a change to not print licenses. He said many states on NMLS don't print a license because they don't have that capability. Since consumer access is a means where the lender can pull a copy of the license, Mr. Fagergren asked the Commission and those in attendance if they saw any problems that might arise from this change. Commissioner Jensen said lenders always ask what her license number is, and she is wondering which number to use. Mr. Fagergren said it would be quite a process to put both numbers on the license, but they will talk to IT and see if it can be done within six months.

There is no new information regarding call reports to discuss. Mr. Fagergren is sure that we will be receiving more details when they make a decision.

The Division has been told that between October 1, 2010 and April 30, 2011, individual licensees have to authorize the Division to pull their credit reports. The Division has no plans to do this unless we are required to do so by statute. We do not believe NMLS has that authority, and this Commission has told us that they don't want the Division reviewing that and making a licensing and renewal decision. The Division doesn't have the staffing to review credit reports and try to assess them for all our thousands of licensees.

Chair Miller said the staff deserves huge congratulations, and we are very fortunate to be in Utah to have everything organized. He read an article from Arizona saying their deadline was July 1, 2010 and they told everyone they had to submit by March 31, 2010. They released a statement yesterday saying they hope to have all the transitions done by August 31, 2010. This means that all those licensees are unlicensed between now and August 31<sup>st</sup>.

### **Industry and Commission Issues – Jennie Jonsson**

Ms. Jonsson said she has two requests for conversion that fall outside the delegation of the authority given to her. One is from Micah Cawley who was revoked on May 18, 2009, appealed, and the appeal was upheld. In the order he was encouraged to reapply after one year, and that year is almost up and he wants to reapply. He is asking that his revocation be converted to a suspension.

The second request is from Tyrone Corbett. He was automatically revoked for failure to disclose, and never appealed. He is not licensed in any other state. Mr. Corbett would like to come back into the industry and is requesting that his revocation be converted to a suspension.

There are some extensive amendments to our body of rules that have been out for public comments. These are the rules that establish the term Branch Lending Manager, and clarify that an entity must have a branch lending manager in place for any branch. Upon renewal, that person has to be licensed as an ALM. Those proposed rules were published on June 15, 2010 and the public comment period ends on July 15, 2010. The effective date could be July 22, 2010 if the Commission wants to give Ms. Jonsson an anticipatory vote today. An anticipatory motion was made to make these rules effective on July 22, 2010 unless public comments have been received. Vote: Chair Miller, yes; Vice Chair Jensen, yes; Commissioner Dailey, yes; Commissioner Lewis, yes. The motion passes.

Ms. Jonsson said two rule amendments have been submitted to the Division of Administrative Rules and will be published this month on July 16<sup>th</sup> in the bulletin. The first is rule 402 which deals with conversions of revocations, and gives more guidance as to what type of criminal history would disqualify someone from having a revocation converted. The second is rule 2(c)-203, which is the instructor certification, and states that the instructor has to take and pass the PLM exam. If you recall, last month we talked about a rule that we need to conduct electronic meetings, and the administration of the Department of Commerce has asked us not to promulgate that rule because they have a rule in place at the administrative level that governs electronic meetings. They would prefer that all the Divisions just operate under that rule.

Meeting took a brief recess from 9:55 a.m. to 10:00 a.m.

**OPEN TO PUBLIC**

LICENSE/RENEWAL HEARINGS:

10:00 Laurie Ho – Post-Revocation Hearing  
Ken Block, Attorney

Motion to go into Executive Session: Vote: Chair Miller, Yes; Vice Chair Jensen, Yes; Commissioner Dailey, Yes; Commissioner Lewis, Yes. The motion carries. Executive Session held from 11:10 a.m. to 11:35 a.m.

**OPEN TO PUBLIC**

10:54 The meeting continued with a continuation of Ms. Jonsson's report regarding conversions on revocations.

Micah Cawley: Motion to convert the revocation to a suspension until December 31, 2010. He can reapply after that date. Vote: Chair Miller, Yes; Vice Chair Jensen, Yes; Commissioner Dailey, Yes; Commissioner Lewis, Yes. Director Sabey concurs and the motion approved.

Tyrone Corbett: Motion to convert the revocation to a suspension. Vote: Chair Miller, Yes; Vice Chair Jensen, Yes; Commissioner Dailey, Yes; Commissioner Lewis, No; Director Sabey, concurs. The motion carries.

There was a Motion to close the meeting to discuss the character, professional competence, or physical and mental health of an individual. Vote: Chair Miller, Yes; Commissioner Dailey, Yes; Commissioner Lewis, Yes. Vice Chair Jensen, Yes. The motion carries.

**CLOSED TO PUBLIC**

Deliberation on Hearing

**OPEN TO PUBLIC**

A motion was made to open the meeting: Vote: Chair Miller, Yes; Commissioner Dailey, Yes; Commissioner Lewis, Yes; Vice Chair Jensen, Yes; Director Sabey, concurs. The motion carries.

Motion was made to adjourn the meeting: Vote: Chair Miller, Yes; Vice Chair Jensen, Yes; Commissioner Dailey, Yes; Commissioner Lewis, Yes; Director Sabey, concurs. The motion carries. The meeting was adjourned at 11:36 a.m.