

STATE OF CONNECTICUT
DEPARTMENT OF BANKING
260 CONSTITUTION PLAZA • HARTFORD, CT 06103-1800



Jorge L. Perez
Commissioner

November 30, 2016

Re: Lead Generation Activity

Dear :

This department has received several requests for opinions as to whether certain activity related to lead generation would require licensure as a mortgage broker or mortgage loan originator in Connecticut.¹ Pursuant to Section 36a-1-8 of the Regulations of Connecticut State Agencies, this department may issue advisory opinions or other legal interpretations regarding any laws or regulations that the Banking Commissioner is charged with administering. Through this advisory interpretation, this department hopes to clarify its position concerning lead generation-related activity requiring licensure.

Background

This department most recently issued an opinion concerning lead generation activity on March 8, 2012. In that opinion, this department considered whether certain information gathering activities constituted "taking a residential mortgage loan application" under Connecticut law. Pursuant to Sections 36a-485 to 36a-498f, inclusive, 36a-534a and 36a-534b of the Connecticut General Statutes, generally, individuals who take residential mortgage loan applications are subject to licensure as mortgage loan originators² and entities that take residential mortgage loan applications are subject to licensure as mortgage brokers³.

¹This opinion analyzes the need for licensure of persons as mortgage loan originators or mortgage brokers, under the assumption that such persons would not be the prospective source of funds for resulting residential mortgage loan transactions. Persons who engage in such activities and are the prospective source of funds would be subject to licensure as a mortgage lender or mortgage correspondent lender, as applicable.

²Section 36a-485(18) of the Connecticut General Statutes defines "mortgage loan originator", in pertinent part, as "an individual who for compensation or gain or with the expectation of compensation or gain, either for such individual or for the person employing or retaining such individual, (A) takes a residential mortgage loan application, or (B) offers or negotiates terms of a residential mortgage loan".

³Section 36a-485(15) of the Connecticut General Statutes defines "mortgage broker", in pertinent part, as "a person who (i) for compensation or gain or with the expectation of compensation or gain (I) takes a residential mortgage loan application, or (II) offers or negotiates terms of a residential mortgage loan, and (ii) is not the prospective source of the funds the for the residential mortgage loan".

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In the March 2012 opinion, after considering guidance set forth in Regulation H,⁴ this department determined that a marketing company that captured borrower information via an on-line form and shared it with local lenders required licensure as a mortgage broker in Connecticut. The form captured the following information: the consumer's name; address; telephone number; e-mail address; annual income; preferred type of interest rate, *e.g.*, adjustable or fixed; property state; property type; purpose of the property, *e.g.*, business or primary residence; self-assessed credit history, *e.g.*, good or bad; occupational status; requested loan amount; existing loan amount(s); existing loan payment(s); bankruptcy history; and monthly debt payment.

In performing its analysis, this department determined that the information form completed by the consumer and transmitted to lenders with the consumer's consent fundamentally constituted a request for an offer of residential mortgage loan terms, that the information collected was information customarily collected when making a decision on whether to make a residential mortgage loan offer, and that the absence of collecting a consumer's Social Security number on the form was not dispositive. This department also stated that such activity was more than simply forwarding an application to a lender to express the consumer's interest or enable contact between the two persons, as the form was designed to and would facilitate a decision by a lender as to whether to extend an offer of residential mortgage loan terms.

Since the issuance of such advisory opinion, many questions have arisen as to which pieces of information collected are critical to constitute the "taking of a residential mortgage application" under Connecticut law. Some persons encourage the adoption of the definition of "application" provided in Regulation Z. Regulation Z provides that "an application consists of the submission of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought". 12 CFR § 1026.2(a)(3).

There are a few issues with relying on the definition of "application" provided under Regulation Z. In particular, the definition of "application" which determines the type of activity requiring state licensure of mortgage loan originators is provided by Regulation H, not Regulation Z. Regulation H provides a more flexible and inclusive definition of "application", defining it as "a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer".

Secondly, a person's activities may require licensure as a mortgage loan originator or mortgage broker under Connecticut law for several reasons, not just for simply taking a residential mortgage loan "application". Persons who offer or negotiate terms of residential mortgage loans also require licensure, as well as persons who advertise that they will negotiate, solicit, place or find a residential mortgage loan, either directly or indirectly. *See e.g. Section 36a-486(a) of the 2016 Supplement to the General Statutes.* Similarly, although Regulation Z provides a limited definition of "application", it also recognizes that a

⁴Regulation H was issued by the Consumer Financial Protection Bureau to implement the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 with the purpose to "enhance consumer protection and reduce fraud by directing states to adopt minimum uniform standards for the licensing and registration of residential mortgage loan originators and to participate in a nationwide mortgage licensing system and registry database of residential mortgage loan originators". 12 CFR § 1008.

myriad of activities come within the scope of mortgage loan origination activity.⁵ As a result, lead generation activity must be examined as a whole to determine whether it triggers any mortgage loan originator or mortgage broker licensure requirements.

Minimum Activity Triggering Mortgage Loan Originator or Mortgage Broker Licensure

As previously stated, this department believes that utilizing the definition of “application” provided by Regulation Z to trigger “taking a residential mortgage loan application” is too limiting and may result in unintended consequences. For example, a person could gather 30 pieces of information concerning a potential borrower, including name, credit score, down payment, income and employer, but without the borrower’s Social Security number, an “application” under Regulation Z technically would not be triggered. Alternatively, this department does acknowledge that the collection of certain information from a borrower is more akin to simple lead generation rather than mortgage loan origination.

Various hypothetical scenarios have been provided to this department via opinion requests to illustrate this point. One hypothetical scenario details a website in which a consumer would provide contact information, estimated home value, loan amount desired, state where the property is located, and the type of loan sought, *i.e.*, purchase, refinance or home equity. The consumer’s data would then be forwarded to the next creditor in a rotating list of participating creditors that offer loans in the specified state and for the specified loan amount.

Comparing this information to the definition of “application” under Regulation H, the information being provided to the creditor appears to qualify as a request for an offer of residential mortgage loan terms, and is information that is customary or necessary in a decision on whether to make such an offer. Critical to such determination is the fact that the consumer is providing financial information unique to his or her personal circumstances to be shared with a lender. By providing the requested loan amount and estimated home value, the consumer is providing the estimated amount of down payment, allowing the creditor to be in a position to respond with an offer of residential mortgage loan terms⁶. Such activity would require licensure as a mortgage loan originator or mortgage broker, as applicable, in Connecticut.

⁵12 CFR § 1026.36(a)(1) provides that the term “loan originator” means, in pertinent part, “a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities”.

⁶This phrase has been broadly construed and is not limited to a contractual offer. *See, e.g.*, Appendix A to Regulation H, which provides, in pertinent part:

- (1) Offering or negotiating the terms of a loan includes:
 - (i) Presenting for consideration by a borrower or prospective borrower particular loan terms, whether verbally, in writing, or otherwise, even if:
 - (A) Further verification of information is necessary;
 - (B) The offer is conditional;
 - (C) Other individuals must complete the loan process;
 - (D) The individual lacks authority to negotiate the interest rate or other loan terms; or
 - (E) The individual lacks authority to bind the person that is the source of the prospective financing.

A similar analysis would hold true whenever any financial information unique to the particular consumer or mortgage loan transaction, including, but not limited to, a consumer's credit score range, income, monthly debt obligations, etc., is obtained, along with a consumer's identifying information such as name or e-mail address, and is intended to be shared with a lender or broker. It is also this department's position that such activity would trigger licensure regardless of how the information is obtained, *e.g.*, via an on-line form, telephone call, mail or in person.

Such activity is distinguishable from quintessential lead generation in which only a consumer's name, contact information, state of residency and type of loan interested in, *i.e.*, purchase, refinance or home equity loan, is collected and shared with a lender for a flat fee, irrespective of whether the information actually results in the consummation of a residential mortgage loan by the lender. This department would not require persons who collect such limited consumer information to be shared with a lender or broker to be licensed as mortgage loan originators or mortgage brokers.⁷ However, once such limited information is augmented by financial information indicative of the consumer's particular circumstance, such as income, down payment or credit score, it is this department's position that such persons would require licensure.

Effect of Automated Systems on Need for Licensure

There have been some questions concerning whether licensure as a mortgage loan originator or mortgage broker is necessary for lead generation activity which is fully automated. With technology always evolving, there are now system-generated methods for obtaining consumer financial information, analyzing such information and filtering such information to lenders or brokers that would best match the consumer's demographics and needs. Once such automated processes are created and implemented, there may be little to no human involvement in the process by which information is transmitted from a consumer to a lender. Yet, both the mortgage broker and mortgage loan originator license types contemplate the involvement of individuals.

For example, pursuant to Section 36a-485(18) of the Connecticut General Statutes, a "mortgage loan originator" is, by definition, an individual and, pursuant to Section 36a-488(a)(1) of the Connecticut General Statutes, in order to obtain a license in Connecticut, a mortgage broker must designate an individual as its qualified individual for its main office. For consumer protection purposes, this department is of the position that the requirements for mortgage broker and mortgage loan originator licensure apply, regardless of the level of automation of the underlying processes that allow for leads to be generated and mortgage loans to be originated. It is the particular activity performed for compensation or gain, or with the expectation of compensation again, that triggers licensure, not the manner in which it is conducted.

⁷This position appears to be consistent with the mandates of Regulation H. Appendix A to Regulation H illustrates examples of taking a loan application and provides, in pertinent part, that "[a]n individual does not take a loan application merely because the individual performs any of the following actions: . . . collects only basic identifying information about the borrower or prospective borrower on behalf of that lender".

Display of Mortgage Loan Terms

With so much focus on activities requiring licensure by this department, it is also important to clarify activities which would likely not require licensure as a mortgage broker or mortgage loan originator in Connecticut. This department recognizes that passive advertising of mortgage products for a flat fee by a third party that provides a universal forum for advertisements, such as billboard owners, television networks and newspaper publishers, likely would not require licensure of the third party. Also, mortgage comparison tools created for informational purposes only, even though they may ask financial questions unique to the particular consumer or mortgage transaction, such as credit score range or down payment amount, so long as they do not collect any identifying information from the consumer, such as name or e-mail address or direct consumers to a particular creditor website, would likely not require persons to become licensed as mortgage loan originators or mortgage brokers in Connecticut.

It is this department's opinion that it is the collection of financial information particular to the consumer or mortgage loan transaction *along with name or contact information* which makes the activity "taking a residential mortgage loan application". Such circumstances were considered by this department in a May 11, 2011 opinion. In that opinion, this department determined that a company which displayed targeted loan quote advertisements to a user and provided a collection form for websites and handheld or mobile phone devices for a user to enter loan criteria, including, among other types of information, loan amount, home value, cash out, loan type, buy down points and credit profile, and offered a service to facilitate contact with a lender by providing a "Contact Me" button to select one of the lenders and sent the user's contact and advertised program information to the lender upon selection, would be taking a residential mortgage loan application and would require licensure as a mortgage broker in Connecticut.

Similarly, it is the displaying of mortgage loan terms based on a consumer's financial circumstances along with actively directing the consumer to the lender's or broker's website which makes the lead generation activity subject to licensure. It is this facilitation of a residential mortgage loan transaction based on financial information particular to the consumer or transaction which would also require persons to be licensed who perform live transfers of consumers to a potential lender or broker. In the absence of collecting consumer identifying information, such activity is analogous to offering terms of a residential mortgage loan or soliciting a residential mortgage loan. As previously stated, a person may be subject to licensure as a mortgage broker or mortgage loan originator if such person offers or negotiates terms of a residential mortgage loan or advertises that they will negotiate, solicit, place or find a residential mortgage loan, either directly or indirectly. Regulation H further provides that an individual "offers or negotiates terms of a residential mortgage loan . . ." if such individual "[p]resents for consideration by a borrower or prospective borrower particular residential mortgage loan terms . . . or . . . [r]ecommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower".


Accordingly, it is this department's position that anytime a person, for compensation or gain, or with the expectation of compensation or gain, takes financial information particular to a consumer or mortgage loan transaction and becomes the conduit between the consumer and the lender or broker, the person is acting in a broker or origination role and would require applicable licensure in Connecticut.⁸

Finally, please be advised that this department, once again, intends to request that the Connecticut General Assembly propose legislation during the next legislative session to create a new lead generator license type under the jurisdiction of this department. The new license type would encompass all residential mortgage loan lead generation activities, including selling leads for residential mortgage loans, generating or augmenting leads for other persons, and directing consumers to another person for a residential mortgage loan transaction by performing marketing services, such as online marketing, direct response advertising or telemarketing.

If you should have any additional questions, please do not hesitate to contact the undersigned at (860) 240-8202.

Very truly yours,

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⁸ Regulation Z is instructive as to further examples of activities that may constitute mortgage loan origination when performed based on a consumer's financial characteristics. See 12 CFR 1026, supplement I, under Section 1026.36 – Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling, which provides, in pertinent part:

- The scope of activities covered by the term loan originator includes: . . .
2. Arranging a credit transaction, including initially contacting and orienting the consumer to a particular loan originator's or creditor's origination process or particular credit terms that are or may be available to that consumer selected based on the consumer's financial characteristics, assisting the consumer to apply for credit, taking an application, offering particular credit terms to the consumer selected based on the consumer's financial characteristics . . .
 3. Assisting a consumer in obtaining or applying for consumer credit by advising on particular credit terms that are or may be available to that consumer based on the consumer's financial characteristics . . .
 4. Presenting particular credit terms for the consumer's consideration that are selected based on the consumer's financial characteristics . . .

See also 12 CFR § 1026.36(6), which provides, in pertinent part, "[c]redit terms are selected based on the consumer's financial characteristics when those terms are selected based on any factors that may influence a credit decision, such as debts, income, assets, or credit history".