Mortgage Companies - State Authorities

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States are the primary regulators of nonbank mortgage companies. State financial regulators have broad licensing, examination, investigation, and enforcement authorities, as outlined below. Prudential standards, including financial capacity (i.e., net worth/capital and liquidity), governance, and risk management requirements, are also a matter of state law enforced by state regulators. Since the largest nonbank mortgage companies are licensed in all or nearly all states, it is important to note that the following authorities apply in both individual and multistate contexts.

Supervision

- Access to books and records on demand
- Access to interview officers, principals, control persons, MLOs, independent contractors, agents, or customers of a licensee
- Control access or take possession of documents and records
- Initiate examinations and investigations, whether targeted or broader based
- Subpoena power to compel production of documents or information
- Investigate and purse enforcement actions as states deem necessary
- Enforce minimum net worth and financial condition requirements as a condition of licensing
- Require that companies obtain and post surety bonds with each licensing state
- Coordination and pursuit of multi-state examinations, investigations, and enforcement activities as deemed necessary by states or governing bodies of state regulators
- Referral and coordination of consumer compliance-related examination and enforcement matters with the CFPB through existing MOU and information sharing protocol
- Retain professionals as needed including attorneys, accountants, or other professionals

Supervisory Actions

- Ability to enter into settlement agreements through Consent Judgments or Consent Orders resolving issues of non-compliance and remediating consumer harm
- Ability to issue Administrative Actions to resolve violations of law:
    - Issuance of a Notification of Charges, Notices of Hearing, or other similar documents
    - Issuance of Cease and Desist Orders regarding specific practices or actions
    - Issuance of suspension orders, including in some states summary or emergency orders
    - Upon notice and hearing, revocation of a license
- Require consumer remediation and redress where violations are found to exist
- Require the restructuring of operations or management to address material deficiencies

- Deny a renewal request when violations are not remediated or minimum requirements are not met
- Condition a license on the performance of certain items or the resolution of ongoing violations
- Restrict a license

Licensing Actions

- License suspension
- License hold in lieu of renewal (pending license renewal with no decision)
- Issuance of Intent to revoke/revocation
- Automatic revocation or suspension of license by individual states based on state-specific criteria, such as nonpayment of assessments, loss of required bonds, or licensing actions of other states
- Company licenses are non-transferable without existing management who are approved in NMLS

Other Actions and Authorities

- Require compliance with applicable state and federal laws and regulations
- Licensee Reporting Requirements (in some cases within 15 days) through NMLS:
    - Notification of a material adverse action with respect to any existing line of credit or warehouse credit agreement, or change in banking relationship
    - Notification of the exercise of recourse rights by investors or subsequent assignees of residential mortgage loans
    - Notification of a change in control at a licensed company
    - Many states have broad provisions that include the reporting of any other information deemed necessary
- Barring MLOs from licensing
- Barring control persons and Qualified Individuals from owning or controlling companies where the individuals don’t hold a license.
- Control persons of licensed companies must be identified, approved, and disclosed in NMLS
    - Some states may require background checks for these individuals that if not completed prevent the person from serving as a control person
- Certain state regulator personnel can monitor individual- and company-level SARs filings through FinCEN to aid in the oversight, monitoring, investigation, and regulation of licenees
- Per Dodd-Frank Section 1042(a)(1): states can sue in federal court to enforce federal consumer protection statutes

If a bankruptcy filing appears imminent, individual states may file charges to preserve police powers that would not be subject to the automatic stay, allowing states to commence or proceed with supervisory actions during the pendency of the bankruptcy

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