

IMPACT Mortgage Management Advocacy and Advisory Group, Inc. (IMMAAG)
Prepared Statement of William F. Kidwell, Jr. President and Founder

Before the House Committee on Business Affairs and Labor

Regarding – HB18 -1774 – *Concerning the continuation under the sunset law of the Board of Mortgage Loan Originators, and, in connection therewith, adopting the legislative recommendations of the Department of Regulatory Agencies as contained in the department's sunset report.*

February 13, 2018

Chairwoman Kraft-Tharp, Vice Chairwoman Winter, Sponsors Arndt and Gray; members of the Business Affairs and Labor Committee; thank you for allowing me to offer comments for your consideration regarding House Bill 18-1174.

My name is Bill Kidwell. I am the founder and president of **IMMAAG**, Inc. a private Colorado-corporation founded in 2008. The company serves the advocacy, information and compliance needs of more than 2,000 mortgage loan originators and their small companies around the country.

I am an active Colorado state licensed mortgage loan originator, the 2007 President of the Colorado Association of Mortgage Brokers (now CoAMP); the 2006 Colorado Mortgage Broker of the Year; a two-year member of the first task force established by the Director of the mortgage loan originator program to provide industry guidance and insights during the initial rule establishment; and a prior contributor to Governor Ritter's Blue Ribbon Panel on Affordable Housing. I have also participated as a member of task forces formed to support industry feedback to the Board of Mortgage Loan Originators.

I come here today in general support of HB18-1174. Absent this legislation, the Colorado mortgage industry as we know it will cease to be controlled locally and will be subject to direct Federal oversight as mandated in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("**SAFE Act**") passed on July 30, 2008. The SAFE Act requires states to establish and maintain oversight of its provisions. In the absence of meeting that requirement, the Director of the Bureau of Consumer Financial Protection is required to establish such oversight at the Federal level. To date, there are no states in the country that have failed to meet and maintain the SAFE Act's mandate. Failure to support Recommendation 1 of the Sunset report would result in the Federal government implementing the required activities under the SAFE Act. This would likely lead to unforeseen consequences with potentially negative implications on both consumers and industry.

IMMAAG supports Recommendation 1. While it questions the sixty-day period on which the Board has to act on license applications; it generally also supports Recommendations 2-4.

However, with respect to Recommendation 5; which in concept is totally supported by **IMMAAG**; in order for Recommendation 5 to be effective and to deliver its intended objectives; **IMMAAG** strongly recommends that the bill be amended to add a definition to C.R.S. §12-61-902.

That addition would define A SMALL COLORADO-BASED MORTGAGE COMPANY THAT PRIMARILY BROKERS MORTGAGE LOANS as: "*A company registered pursuant to §12-61-903.1 with its primary headquarters located in Colorado with no more than nine (9) Colorado state licensed Mortgage Loan Originators employed by, contracted with or otherwise originating residential mortgage loans for that company; and [for the purposes of defining PRIMARILY BROKERS as referenced in proposed 12-61-902.5(b)(1)], the company does not self-fund any of the residential mortgage loans arranged for origination by its individual mortgage loan originators.*"

I have been given to understand that there are members of the committee that are opposed to recommendation 5 as it is written and that there will likely be more earnest opposition to clarifying the proposed language.

Therefore, the balance of my comments will address arguments explaining the importance of Recommendation 5 and the addition of the definition to the law.

The terms “small” and “primarily” are open to interpretation to such a degree that they effectively do not change the statute’s existing language. Without providing a definition of those terms in the context of the proposed legislation; the issue that is addressed by Recommendation 5 remains unresolved.

Recommendation 5 addresses the impact of the lack of diversity on the Board of MLO’s that negatively impacts the Board’s ability to deliver its regulatory purpose and to effectively protect consumers.

The current statute, effective in August 2010 calls for a Board consisting of “*three licensed mortgage loan originators and two members of the public at large not engaged in mortgage loan origination or mortgage lending.*” [(C.R.S. 12-61-902.5(1)]. Prior to implementing the Board model, the mortgage loan origination program authorized by statute in 2007 was a Director model. It is clear the intent of the transfer to the Board model was to diversify the governance of the mortgage loan originator program.

The issue created by simply designating a member as a state licensed mortgage loan originator (MLO) is that the mortgage industry is not a homogenous collection of individuals or companies that originate or arrange the origination of mortgage loans. There is tremendous diversity in the background, insights and expertise of the individuals across three different types of businesses.

These three “types” of originator companies may be characterized as:

- 1) *Traditional brokerage companies* – these firms do not use their own or borrowed funds and do not underwrite the mortgage loans they submit to funding sources.
- 2) *“Mini”-Correspondents* – these firms generally “broker” mortgages, meaning they use a variety of funding sources selected based on the characteristics of the funding sources’ products and the borrower needs; but they use their own funds; generally, in the form of warehouse lines of credit to originate the loans. However, these companies do not underwrite the loans. They rely on the source that is funding the mortgage for final credit decisions.
- 3) *Correspondents* – these firms may broker, meaning they may fund and underwrite the mortgages based on either their own guidelines or the guidelines of the lender to whom the loan will be sold; or they may function as a retail company selling or “pooling” loans.

The differences in business models among the types of origination companies have a direct impact on consumer. Traditional broker companies offer the broadest product choice and the most flexibility to determine the best “fit” for the consumers’ needs. Both the “mini”-correspondent and the correspondent limit consumer choice by virtue of either a more limited selection of funding sources to whom the companies may “sell” the loans; or simply limiting the product selection to the products available to the correspondent.

The business model also affects the general nature of the background and mindset of the individual mortgage loan originator. To better understand how the business model affects the individual mortgage loan original some industry data may help.

Based on information made available annually by the Conference of State Bank Regulators to **IMMAAG**, in 2017 there were approximately 16,355 registered mortgage loan originator companies. Of these firms, over 14,993 (91.7%) reported 0 – 9 MLO’s. Of these, almost 9,000 (54.4%) reported zero or one MLO. (Note the zero number is predominantly really a “one” and is the result of licensed processors and some companies licensing individuals that do not actually originate). But the point is that this industry is clearly dominated by very small, privately held, independent companies with half of the industry represented by what would effectively be identified as broker/owners. In other words, small business owners.

Colorado shares a very similar distribution. Based on numbers made available to **IMMAAG** by the Division of Real Estate and information mined from the Nationwide Multistate Licensing System and Registry (NMLS&R) annually by **IMMAAG**, in 2017 there were 499 companies registered to originate mortgages and located in the state. Of these, 463 (92.7%) reported 0-10 MLO's to the NMLS&R. Of those 463, 248 (53.4%) reported zero or one MLO. Colorado is reflective, almost identically, to the national distribution of MLO's per company.

So, why is the data important?

The Board was clearly implemented in 2010 as a replacement to the Director model in order to diversify the membership. The diversification may only be concluded to have been desired to distribute the power of the Board among a few rather than vest it in one; and to provide the necessary cross representation to insure consumers were protected and industry had a voice in the decisions made by the Board.

However, in the seven years since the inception of the Board only one of the members has been appointed from either the 92% representing the MLO companies with 0-9 MLO's or from the 53% representing the companies with zero or one.

So what?

First, it is the smaller companies that offer an owner operator mindset and experience. The insight provided by MLO's that are actually owners or work in companies where they are exposed to such a mentality function very differently than MLO's that choose to work for larger companies.

Further, management in the larger companies have a different mindset and experience and even motivation than the owners and MLO's in the smallest companies.

In larger companies, management is motivated by managing and insuring the MLO's generate revenue to sustain operations. In the smaller shops, which clearly dominate the industry nationally and locally; the motivation is to stay in business. This occurs by providing services to consumers that are compelling and incent the consumers to refer business and to return for repeat business. The MLO's and owners of these companies know that if they do not deliver, the company will go out of business. This fundamental business dynamic causes the individuals to think differently than the "sales person" will think and to offer consumers a much more focused, thoughtful and consumer-centric experience.

At the same time the mindset created by or driving the decision to run one's own business or to work in such a small shop environment causes the individual to think differently than a manager or sales person.

This consumer-oriented mindset driven by the daily experience of arranging products supporting the best interests and needs of the consumers has been almost totally absent from the Board of MLO's.

The purpose of Recommendation 5 is to remedy this omission by mandating that one of the industry members comes from the segment of the industry that offers this different and consumer-oriented mindset. Failing to insure that this population has a seat on the Board fails to deliver the true reason for the Board's existence.

Seven years of history indicates that left without the mandate in Recommendation 5, the selection process will fail to insure the consumer protection implied by the inclusion of someone from this market segment.

And, since the Recommendation sets aside only one member spot of three; the 39 (7.8%) companies that represent the remaining industry candidates still have access to 67% of the industry representation.

Therefore, **IMMAAG** asks the committee to not only support Recommendation 5 as written but to support an amendment, when introduced that will define the words Small and Primarily as it has been defined here by mandating that one industry member on the Board be drawn from the population of Colorado mortgage companies with 9 or fewer MLO's. To fail to support Recommendation and the clarifying definition is to fail to provide consumers the benefit of diverse experience and thinking.

Thank you. I would be happy to answer any questions the committee may have.

IMPACT Mortgage Management Advocacy and Advisory Group, Inc. (IMMAAG) is a privately owned Colorado corporation founded in 2008 to provide advocacy and information for the traditional mortgage companies around the United States. In 2012, it introduced a compliance management system solution targeted at the same small mortgage company segment. **IMMAAG** now has a registered user and subscriber base in excess of 2,000 users. Contact Bill Kidwell at (303) 674-1200 or bill@immaag.com.