

ALASKA STATE LEGISLATURE

Senator Joe Paskvan

Chair, Labor and Commerce
Vice Chair, Health and Social Services
Member, Transportation
Member, State Affairs
Member, Joint Armed Services

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Fairbanks and Fort Wainwright*



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Sponsor Statement Senate Bill 149: Mortgage Lending

“An Act relating to the regulation of residential real property mortgage lending, including the licensing of mortgage lenders, mortgage brokers, and mortgage loan originators and compliance with certain federal laws relating to residential mortgage lending; and providing for an effective date.”

Senate Bill 149, along with regulations promulgated when the bill becomes law, will bring Alaska’s mortgage lending law into compliance with the new federal law and national licensing system.

Alaska’s current mortgage lending law, the Alaska Mortgage Lending Regulation Act (AMLRA), found at AS 06.60, became effective July 1, 2008. The law requires that mortgage lenders, brokers, and originators apply for and obtain a mortgage license in order to do business in Alaska. The purpose of this law is to protect consumers and hinder predatory lending and fraudulent behavior.

On July 30, 2008, a new federal law called the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the SAFE Act) became effective. The SAFE Act requires that all states implement a mortgage law that conforms to its requirements by July 30, 2009, and that all states use a national database for licensing mortgage loan originators. States may comply through statute and regulation and may implement more comprehensive mortgage lending laws than are provided under the federal SAFE Act, which provides minimum standards and requirements.

Under the federal SAFE Act, states with legislatures that meet annually have until July 30, 2009, to comply. States must also join the National Mortgage Licensing System (NMLS) and participate in licensing through this nationwide system by the deadline.

If a state does not comply with the federal law by the deadline, then the U.S. Department of Housing and Urban Development (HUD) is required under the SAFE Act to license loan originators in the state. The state will then have no say in who conducts business in the state. While a state may maintain authority under their existing law, the authority will be subordinate to HUD. This structure will increase the regulatory burden and cost on the industry. HUD is not required to coordinate with the states. Therefore, it is important for Alaska to make every effort to amend current law by passing SB 149 in order to become compliant with the new federal law within the earliest possible time frame.

Noncompliant states, with legislatures that meet annually, may apply to HUD for a one year extension. They must show that they are making a good faith effort to join the NMLS and become compliant with federal law. Each state must have a reasonable implementation plan in place. However, HUD has not stated specific standards as of yet for granting an extension. Because Alaska's legislature meets for only three months (from mid-January to mid-April), even if this bill passes this legislative session, the state would not have enough time to amend current regulations and promulgate new regulations to implement the law. Under SB 149, Alaska will comply with the S.A.F.E. Act through both statute and regulation, yet two and one-half months from the end of session to the implementation deadline may not be adequate time to amend our regulations and give public notice.

Alaska is scheduled to join the NMLS on August 1, 2009, and to begin licensing through the NMLS at that time. States are allowed to join prior to the effective date of their legislation, provided they have statutory approval to join and pay the one-time fee. After payment of the one-time fee, the cost for operating the NMLS is born by the industry through fees. It is important that we show our intent to comply with the SAFE Act by joining the NMLS on schedule. This will further support our application for an extension to HUD.

A few examples of revisions and requirements under the SAFE Act follow: (a) changing our current license renewals from a biennial to an annual renewal, (b) requiring 20 hours of pre-licensing education, and (c) requiring that originators working for mortgage loan servicers and loan modification businesses become licensed. One of the primary advantages to joining the NMLS, however, is the sharing of information among states, and the ability to conduct joint exams with other states for out-of-state mortgage loan originators doing business in Alaska.

I urge your support of Senate Bill 149.

SENATE BILL NO. 149

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY SENATORS PASKVAN, Therriault

Introduced: 3/13/09

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the regulation of residential real property mortgage lending,
2 including the licensing of mortgage lenders, mortgage brokers, and mortgage loan
3 originators and compliance with certain federal laws relating to residential mortgage
4 lending; and providing for an effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 06.01.050(3) is amended to read:

7 (3) "financial institution" means an institution subject to the regulation
8 of the department under this title; in this paragraph, "institution" includes a
9 commercial bank, savings bank, credit union, premium finance company, small loan
10 company, bank holding company, financial holding company, trust company, savings
11 and loan association, deferred deposit advance licensee under AS 06.50, and a
12 licensee under AS 06.62 [AS 06.60, A SMALL MORTGAGE LENDER UNDER
13 AS 06.60, AND AN ORIGINATOR UNDER AS 06.60 WHO IS EMPLOYED BY
14 OR WORKS UNDER EXCLUSIVE CONTRACT FOR A SMALL MORTGAGE

LENDER; IN THIS PARAGRAPH,

(A) "LICENSEE UNDER AS 06.60" HAS THE MEANING GIVEN TO "LICENSEE" IN AS 06.60.990;

(B) "ORIGINATOR UNDER AS 06.60" HAS THE MEANING GIVEN TO "ORIGINATOR" IN AS 06.60.990;

(C) "SMALL MORTGAGE LENDER UNDER AS 06.60" HAS THE MEANING GIVEN TO "SMALL MORTGAGE LENDER" IN AS 06.60.990];

* **Sec. 2.** AS 06 is amended by adding a new chapter to read:

Chapter 62. Regulation of Mortgage Lending.

Article 1. Regulation of Mortgage Lending.

Sec. 06.62.010. Regulation of mortgage lending. The department shall regulate mortgage lending activities in the state, including regulating a person operating as a mortgage lender, mortgage broker, or mortgage loan originator.

Sec. 06.62.020. Duties of the department. The department shall adopt regulations necessary to implement, interpret, or make specific this chapter, including provisions relating to

(1) licensing of a mortgage lender, mortgage broker, or mortgage loan originator, including submission of fingerprints for criminal history background checks for an applicant or licensee;

(2) examination, investigation, and discipline of a person required to be licensed under this chapter;

(3) competency testing and continuing education requirements for persons required to be licensed under this chapter;

(4) mortgage business duties and restrictions;

(5) compliance with federal requirements, including 12 U.S.C. 5101 - 5116 (Secure and Fair Enforcement for Mortgage Licensing Act of 2008);

(6) compliance with the requirements of the Nationwide Mortgage Licensing System and Registry for licensing by the state of mortgage lenders, mortgage brokers, and mortgage loan originators; in this paragraph, "Nationwide Mortgage Licensing System and Registry" has the meaning given in 12 U.S.C.

1 5102(5);

2 (7) enforcement of provisions of law relating to mortgage lending;

3 (8) administration of the provisions of AS 06.62.100 - 06.62.180,
4 relating to the mortgage loan originator surety fund, and AS 06.62.200, relating to a
5 program administration fee; and

6 (9) the assessment of fees and other charges, including fund fees, late
7 payment penalties, and the reimbursement of investigation and examination expenses
8 related to the regulation of mortgage lending activities.

9 **Article 2. Mortgage Loan Originator Surety Fund.**

10 **Sec. 06.62.100. Mortgage loan originator surety fund.** The mortgage loan
11 originator surety fund is established as a separate account in the general fund. The
12 purpose of the fund is to pay fund claims against mortgage originator licensees.

13 **Sec. 06.62.110. Composition of fund.** The fund consists of payments made by
14 mortgage loan originator licensees under AS 06.62.120, filing fees for fund claims,
15 income earned on the investment of the money in the fund, and money appropriated to
16 the fund.

17 **Sec. 06.62.120. Required fund fees.** A person who applies for or renews a
18 mortgage loan originator license shall pay to the department a fee established by the
19 department.

20 **Sec. 06.62.130. Maximum liability.** (a) Payment of a fund claim out of the
21 fund may not exceed \$15,000 for each claimant and \$15,000 for each mortgage loan
22 transaction regardless of the number of persons injured or the number of pieces of
23 residential real property involved in the mortgage loan transaction.

24 (b) The liability of the fund for fund claims against one mortgage loan
25 originator licensee may not exceed \$50,000.

26 (c) If the liability limit under (b) of this section is insufficient to pay in full the
27 valid fund claims of all persons who have filed fund claims regarding one mortgage
28 loan originator licensee, the \$50,000 shall be distributed among the claimants in the
29 ratio that their individual fund claims bear to the aggregate of valid claims against that
30 mortgage loan originator licensee. The department shall distribute the money among
31 the persons entitled to share in the recovery without regard to the order in which their

1 fund claims were filed.

2 **Sec. 06.62.140. Election to use small claims court.** (a) Within 30 days after
3 receiving a copy of a fund claim under this chapter, the mortgage loan originator
4 licensee against whom the claim is made may elect to defend the fund claim as a small
5 claims action in district court under District Court Rules of Civil Procedure if the
6 claim does not exceed the small claims jurisdictional limit.

7 (b) A mortgage loan originator licensee who elects under (a) of this section to
8 defend a fund claim in district court under the small claims rules may not revoke the
9 election without the consent of the person who filed the fund claim.

10 (c) On receipt of a valid written election under (a) of this section, the
11 department shall dismiss the fund claim filed with the department and notify the
12 person who filed the fund claim that the fund claim will not be reimbursed by the
13 fund, but that the person who filed the fund claim may bring a small claims action in
14 the appropriate district court.

15 **Sec. 06.62.150. False claims or documents.** A person who knowingly files a
16 notice, statement, or other document under AS 06.62.100 - 06.62.160 that contains a
17 material misstatement of fact is guilty of a class A misdemeanor. In this section,
18 "knowingly" has the meaning given in AS 11.81.900.

19 **Sec. 06.62.160. Right to subrogation.** When the department has paid fund
20 money to a claimant, the department shall be subrogated to all of the rights of the
21 claimant to the amount paid, and the claimant shall assign all right, title, and interest in
22 that portion of the claim to the department. The department shall deposit in the fund
23 the money collected by the department under this section on the claim.

24 **Sec. 06.62.170. Claim hearing.** Except as otherwise provided by
25 AS 06.62.140, a hearing on a fund claim shall be handled by the office of
26 administrative hearings (AS 44.64.010).

27 **Sec. 06.62.180. Definition.** In AS 06.62.100 - 06.62.180, "fund claim" means a
28 claim against the fund.

29 **Article 3. Program Administration Fee.**

30 **Sec. 06.62.200. Authorization of program administration fee.** (a) The
31 department may establish and collect a program administration fee for each mortgage

1 loan transaction to reimburse the state for the cost of administering this chapter.

2 (b) The program administration fee shall be paid by a borrower who is
3 providing real property as security for the mortgage loan, except that, if the regulations
4 of a federal or state loan program that insures the loan and that applies to the mortgage
5 loan transaction prohibits the borrower from paying the program administration fee,
6 another party to the mortgage loan transaction shall pay the program administration
7 fee.

8 (c) If there are multiple mortgage loan instruments recorded for a single
9 mortgage loan transaction, the department shall collect only one program
10 administration fee.

11 (d) The program administration fees collected under this section shall be
12 separately accounted for and may be appropriated by the legislature to the department
13 for the operation of this chapter.

14 (e) In this section, "mortgage loan instrument" means a deed of trust,
15 mortgage, or another loan instrument recorded to encumber residential real property in
16 the state.

17 **Article 4. Examination and Enforcement.**

18 **Sec. 06.62.300. Examination.** Notwithstanding AS 06.01.015, the department
19 may conduct an examination every 36 months for a person required to be licensed
20 under this chapter. The department may conduct an examination more often if the
21 examination is part of the review of a complaint or other information received by the
22 department concerning the person.

23 **Sec. 06.62.310. Unfair trade practices and consumer protection.** (a) This
24 chapter may not be interpreted to prevent the attorney general or any other person
25 from exercising the rights provided under AS 45.50.471 - 45.50.561.

26 (b) If the department determines that a licensee or a person acting on behalf of
27 the licensee is in violation of, or has violated, a provision of this chapter or the
28 regulations adopted under this chapter, the department may refer the information to the
29 attorney general and request that the attorney general investigate the violation under
30 AS 45.50.495. The attorney general may enjoin a violation of this chapter and may
31 seek restitution, rescission, and other relief as allowed by law.

(c) In addition to another investigation allowed under this chapter, the department may conduct other examinations, periodic audits, special audits, investigations, and hearings as may be necessary and proper for the efficient administration of this chapter.

Article 5. General Provisions.

Sec. 06.62.400. Definitions. In this chapter, unless the context otherwise requires,

(1) "department" means the Department of Commerce, Community, and Economic Development;

(2) "fund" means the mortgage loan originator surety fund established under AS 06.62.100.

* **Sec. 3.** AS 09.38.065(a) is amended to read:

(a) **Notwithstanding** [SUBJECT TO AS 06.60.360(e), AND NOTWITHSTANDING] other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind to enforce a claim for

(A) child support;

(B) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

(C) state or local taxes;

(2) a creditor may make a levy against exempt property to enforce a claim for

(A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and used for that purpose;

(B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and

(C) a special assessment imposed to defray costs of a public improvement benefiting the property; and

(3) a creditor may make a levy against exempt property of any kind to

1 enforce the claim of a victim, including a judgment of restitution on behalf of a victim
 2 of a crime or a delinquent act, if the claim arises from conduct of the debtor that
 3 results in a conviction of a crime or an adjudication of delinquency, except that the
 4 debtor is entitled to an exemption in property

5 (A) not to exceed an aggregate value of \$3,000 chosen by the
 6 debtor from the following categories of property:

7 (i) household goods and wearing apparel reasonably
 8 necessary for one household;

9 (ii) books and musical instruments, if reasonably held
 10 for the personal use of the debtor or a dependent of the debtor; and

11 (iii) family portraits and heirlooms of particular
 12 sentimental value to the debtor; and

13 (B) not to exceed an aggregate value of \$2,800 of the debtor's
 14 implements, professional books, and tools of the trade.

15 * **Sec. 4.** AS 12.62.400 is amended to read:

16 **Sec. 12.62.400. National criminal history record checks for employment,**
 17 **licensing, and other noncriminal justice purposes.** To obtain a national criminal
 18 history record check for determining a person's qualifications for a license, permit,
 19 registration, employment, or position, a person shall submit the person's fingerprints to
 20 the department with the fee established by AS 12.62.160. The department may submit
 21 the fingerprints to the Federal Bureau of Investigation to obtain a national criminal
 22 history record check of the person for the purpose of evaluating a person's
 23 qualifications for

24 (1) a license or conditional contractor's permit to manufacture, sell,
 25 offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage
 26 under AS 04.11;

27 (2) licensure as a mortgage lender, a mortgage broker, or an originator
 28 under AS 06.62 [AS 06.60];

29 (3) admission to the Alaska Bar Association under AS 08.08;

30 (4) licensure as a collection agency operator under AS 08.24;

31 (5) a certificate of fitness to handle explosives under AS 08.52;

(6) licensure to practice nursing or certification as a nurse aide under AS 08.68;

(7) a position involving supervisory or disciplinary power over a minor or dependent adult for which criminal justice information may be released under AS 12.62.160(b)(9);

(8) a teacher certificate under AS 14.20;

(9) licensure as a security guard under AS 18.65.400 - 18.65.490;

(10) a concealed handgun permit under AS 18.65.700 - 18.65.790;

(11) licensure as an insurance producer, managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, or independent adjuster under AS 21.27;

(12) serving and executing process issued by a court by a person designated under AS 22.20.130;

(13) a school bus driver license under AS 28.15.046;

(14) licensure as an operator or an instructor for a commercial driver training school under AS 28.17;

(15) registration as a broker-dealer, agent, investment adviser representative, or state investment adviser under AS 45.55.030 - 45.55.060.

* **Sec. 5.** AS 44.62.330(a)(48) is amended to read:

(48) Department of Commerce, Community, and Economic Development relating to mortgage lending under AS 06.62 [AS 06.60].

* **Sec. 6.** AS 44.64.030(a)(5) is amended to read:

(5) AS 06 (banks, financial institutions, and fund claims), except as provided otherwise by AS 06.62.170 [AS 06.60.590];

* **Sec. 7.** AS 45.50.471(b)(52) is amended to read:

(52) violating AS 06.62 [AS 06.60.010 - 06.60.380] (mortgage lending regulation);

* **Sec. 8.** AS 45.50.481(c) is amended to read:

(c) The exemption in (a)(1) of this section does not apply to an act or transaction regulated under AS 06.62 [AS 06.60].

* **Sec. 9.** AS 06.60.010, 06.60.015, 06.60.017, 06.60.020, 06.60.025, 06.60.026, 06.60.027,

06.60.030, 06.60.035, 06.60.040, 06.60.045, 06.60.050, 06.60.060, 06.60.065, 06.60.070,
 06.60.075, 06.60.080, 06.60.085, 06.60.090, 06.60.095, 06.60.097, 06.60.100, 06.60.105,
 06.60.110, 06.60.115, 06.60.120, 06.60.130, 06.60.135, 06.60.140, 06.60.145, 06.60.150,
 06.60.155, 06.60.157, 06.60.159, 06.60.160, 06.60.200, 06.60.210, 06.60.230, 06.60.240,
 06.60.250, 06.60.260, 06.60.270, 06.60.280, 06.60.320, 06.60.330, 06.60.340, 06.60.350,
 06.60.360, 06.60.370, 06.60.380, 06.60.400, 06.60.410, 06.60.420, 06.60.430, 06.60.440,
 06.60.500, 06.60.510, 06.60.520, 06.60.530, 06.60.540, 06.60.550, 06.60.560, 06.60.570,
 06.60.580, 06.60.590, 06.60.600, 06.60.610, 06.60.620, 06.60.630, 06.60.640, 06.60.650,
 06.60.660, 06.60.670, 06.60.680, 06.60.690, 06.60.700, 06.60.710, 06.60.720, 06.60.730,
 06.60.740, 06.60.745, 06.60.750, 06.60.800, 06.60.810, 06.60.850, 06.60.860, 06.60.890,
 06.60.895, 06.60.900, 06.60.905, 06.60.910, 06.60.920, 06.60.990, 06.60.995;
 AS 09.38.015(e); and AS 12.62.400(2) are repealed.

* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: EXISTING LICENSES ISSUED UNDER FORMER AS 06.60. (a) A person holding a valid license issued under former AS 06.60 as of the effective date of sec. 2 of this Act may continue to operate under that license until the license expires, is revoked, or is suspended, and AS 06.62, as enacted by sec. 2 of this Act, including its provisions on expiration, renewal, expiration, prohibitions, revocation, suspension, and enforcement, apply to the license and to the person's operation under the license.

(b) In (a) of this section, "AS 06.62" means AS 06.62 and the regulations adopted under AS 06.62.

* **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Commerce, Community, and Economic Development may adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2010.

* **Sec. 12.** Section 11 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 13.** Except as provided in sec. 12 of this Act, this Act takes effect July 1, 2010.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 149
 () Publish Date: _____

Identifier (file name): SB 149 -CED-BankingSecurities 03-13-09
 Title: Regulation of Mortgage Lending
 Dept. Affected: DCCED
 RDU: Banking and Securities
 Component: Banking and Securities
 Sponsor: Senate Labor and Commerce Committee
 Requester: Senate Labor and Commerce Committee
 Component Number: 2808

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES							
Personal Services							
Travel	28.0		7.0	0.0	0.0	0.0	0.0
Contractual	100.0		0.0	0.0	0.0	0.0	0.0
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	128.0	0.0	7.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Rcpt Svcs (1156)	128.0		7.0				
TOTAL	128.0	0.0	7.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time	0	0	0	0	0	0	0
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

The purpose of this bill is to bring current mortgage lending statutes into compliance with the new federal law.

Alaska's state mortgage lending law (effect July 1, 2008) requires that mortgage lenders, brokers, and originators apply for and obtain a mortgage license to do business in Alaska. The federal S.A.F.E. Act (enacted July 30, 2008) requires, in part, that all states utilize a national database licensing system called the National Mortgage Lending System (NMLS) to license mortgage loan originators. These laws are intended to protect consumers and hinder predatory lending and fraudulent behavior in the mortgage lending industry.

Prepared by: Lorie Hovanec, Director
 Division: Banking and Securities, DCCED
 Approved by: Emil Notti, Commissioner
Commerce, Community, and Economic Development

Phone (907) 465-2521
 Date/Time 2/5/09 4:00 PM
 Date 3/11/2009

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. SB 149

ANALYSIS CONTINUATION

The contractual component in this fiscal note reflects \$30,000 in legal fees associated with drafting the regulation package; a one-time fee of \$50,000 to join the NMLS; and \$20,000 for system upgrades to interface with the NMLS.

The travel component in this fiscal note reflects necessary attendance by the licensing examiner and the regulatory examiners at training seminars held at the NMLS headquarters in Richmond, VA in FY10. Another training seminar will be held in FY 11 that would be attended by a regulatory examiner. Travel to Richmond, VA is necessary to provide hands-on training where the database is housed. It also allows two very distinct areas of training on the NMLS system. One area is to accept the application for licensure issued by each state and the second area is for the regulatory examiners to access information for enforcement actions.

After FY11 this bill will have a zero fiscal impact for the Department. Any additional workload required to comply with the S.A.F.E. Act or to implement this legislation will be absorbed by existing staff.

26-LS0734\R
Bannister
3/17/09

CS FOR SENATE BILL NO. 149()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS PASKVAN, Therriault

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2 mortgage brokers, and mortgage loan originators; in this paragraph, "Nationwide
3 Mortgage Licensing System and Registry" has the meaning given in 12 U.S.C.
4 5102(5);

5 (7) enforcement of provisions of law relating to mortgage lending,
6 including enforcement by cease and desist orders, censure orders, removal orders,
7 penalty assessments, license suspensions, license revocations, rescission orders,
8 disgorgement orders, restitution orders, summary orders, temporary orders, and orders
9 barring persons from certain positions;

10 (8) administration of the provisions of AS 06.62.100 - 06.62.180,
11 relating to the mortgage loan originator surety fund, and AS 06.62.200, relating to a
12 program administration fee; and

13 (9) the assessment of fees and other charges, including fund fees, late
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22 income earned on the investment of the money in the fund, and money appropriated to
23 the fund.

24 **Sec. 06.62.120. Required fund fees.** A person who applies for or renews a
25 mortgage loan originator license shall pay to the department a fee established by the
26 department.

27 **Sec. 06.62.130. Maximum liability.** (a) Payment of a fund claim out of the
28 fund may not exceed \$15,000 for each claimant and \$15,000 for each mortgage loan
29 transaction regardless of the number of persons injured or the number of pieces of
30 residential real property involved in the mortgage loan transaction.

31 (b) The liability of the fund for fund claims against one mortgage loan

1 originator licensee may not exceed \$50,000.

2 (c) If the liability limit under (b) of this section is insufficient to pay in full the
3 valid fund claims of all persons who have filed fund claims regarding one mortgage
4 loan originator licensee, the \$50,000 shall be distributed among the claimants in the
5 ratio that their individual fund claims bear to the aggregate of valid claims against that
6 mortgage loan originator licensee. The department shall distribute the money among
7 the persons entitled to share in the recovery without regard to the order in which their
8 fund claims were filed.

9 **Sec. 06.62.135. Other rights of claimant.** The rights granted to a claimant
10 under AS 06.62.100 - 06.62.180 do not limit any other cause of action the claimant
11 may have against a mortgage loan originator.

12 **Sec. 06.62.140. Election to use small claims court.** (a) Within 30 days after
13 receiving a copy of a fund claim under this chapter, the mortgage loan originator
14 licensee against whom the claim is made may elect to defend the fund claim as a small
15 claims action in district court under District Court Rules of Civil Procedure if the
16 claim does not exceed the small claims jurisdictional limit.

17 (b) A mortgage loan originator licensee who elects under (a) of this section to
18 defend a fund claim in district court under the small claims rules may not revoke the
19 election without the consent of the person who filed the fund claim.

20 (c) On receipt of a valid written election under (a) of this section, the
21 department shall dismiss the fund claim filed with the department and notify the
22 person who filed the fund claim that the fund claim will not be reimbursed by the
23 fund, but that the person who filed the fund claim may bring a small claims action in
24 the appropriate district court.

25 **Sec. 06.62.150. False claims or documents.** A person who knowingly files a
26 notice, statement, or other document under AS 06.62.100 - 06.62.160 that contains a
27 material misstatement of fact is guilty of a class A misdemeanor.

28 **Sec. 06.62.160. Right to subrogation.** When the department has paid fund
29 money to a claimant, the department shall be subrogated to all of the rights of the
30 claimant to the amount paid, and the claimant shall assign all right, title, and interest in
31 that portion of the claim to the department.

1 **Sec. 06.62.170. Claim hearing.** Except as otherwise provided by
2 AS 06.62.140, a hearing on a fund claim shall be handled by the office of
3 administrative hearings (AS 44.64.010).

4 **Sec. 06.62.180. Definition.** In AS 06.62.100 - 06.62.180, "fund claim" means a
5 claim against the fund.

6 **Article 3. Program Administration Fee.**

7 **Sec. 06.62.200. Authorization of program administration fee.** (a) The
8 department may establish and collect a program administration fee for each mortgage
9 loan transaction to reimburse the state for the cost of administering this chapter.

10 (b) The program administration fee shall be paid by a borrower who is
11 providing real property as security for the mortgage loan, except that, if the regulations
12 of a federal or state loan program that insures the loan and that applies to the mortgage
13 loan transaction prohibits the borrower from paying the program administration fee,
14 another party to the mortgage loan transaction shall pay the program administration
15 fee.

16 (c) If there are multiple mortgage loan instruments recorded for a single
17 mortgage loan transaction, the department shall collect only one program
18 administration fee.

19 (d) The program administration fees collected under this section shall be
20 separately accounted for and may be appropriated by the legislature to the department
21 for the operation of this chapter.

22 (e) In this section, "mortgage loan instrument" means a deed of trust,
23 mortgage, or another loan instrument recorded to encumber residential real property in
24 the state.

25 **Article 4. Examination and Enforcement.**

26 **Sec. 06.62.300. Examination.** Notwithstanding AS 06.01.015, the department
27 may conduct an examination every 36 months for a person required to be licensed
28 under this chapter. The department may conduct an examination more often if the
29 examination is part of the review of a complaint or other information received by the
30 department concerning the person.

31 **Sec. 06.62.310. Unfair trade practices and consumer protection.** (a) This

chapter may not be interpreted to prevent the attorney general or any other person from exercising the rights provided under AS 45.50.471 - 45.50.561.

(b) If the department determines that a licensee or a person acting on behalf of the licensee is in violation of, or has violated, a provision of this chapter or the regulations adopted under this chapter, the department may refer the information to the attorney general and request that the attorney general investigate the violation under AS 45.50.495. The attorney general may enjoin a violation of this chapter and may seek restitution, rescission, and other relief as allowed by law.

(c) In addition to another investigation allowed under this chapter, the department may conduct other examinations, periodic audits, special audits, investigations, and hearings as may be necessary and proper for the efficient administration of this chapter.

Sec. 06.62.320. Publication of disciplinary action. The department may release for publication on the Internet and in the area where a person who is required to be licensed under this chapter operates as a mortgage lender, mortgage broker, or mortgage loan originator a notice of disciplinary action taken by the department against the person.

Sec. 06.62.330. Department list. The department may make available to the public a list of all persons who are licensed under this chapter and who have been censured, who have been barred from holding a position, or who have had their licenses suspended or revoked under this chapter. The department shall update the list on a monthly basis.

Sec. 06.62.340. Criminal penalties. (a) The department may report violations under (b) - (e) of this section to the attorney general, who may take action to enforce the criminal penalties provided in (b) - (e) of this section.

(b) A person who knowingly provides false or misleading information to the department that is material under this chapter is guilty of a class A misdemeanor.

(c) A person who is required to be licensed under this chapter and who knowingly fails to account for or deliver to a person money, deposits, or checks or other forms of negotiable instruments in violation of this chapter is guilty of a class A misdemeanor.

(d) A person who is required to be licensed under this chapter and who knowingly fails to disburse money belonging to a borrower without just cause is guilty of a class A misdemeanor.

(e) Unless the person is except from licensing under this chapter, a person who knowingly does business in this state as a mortgage lender, mortgage broker, or mortgage loan originator without a license issued under this chapter is guilty of a class A misdemeanor.

Sec. 06.62.350. Civil penalty. A person who violates this chapter, a regulation adopted under this chapter, or an order issued under this chapter is liable to the state for a civil penalty not to exceed \$10,000 for each violation.

Sec. 06.62.360. Remedies not exclusive. The remedies provided by this chapter are not exclusive and may be sought in combination with other remedies available under law to enforce this chapter.

Article 5. General Provisions.

Sec. 06.62.400. Definitions. In this chapter, unless the context otherwise requires,

(1) "department" means the Department of Commerce, Community, and Economic Development;

(2) "fund" means the mortgage loan originator surety fund established under AS 06.62.100;

(3) In this chapter, "knowingly" has the meaning given in AS 11.81.900.

* **Sec. 3.** AS 09.38.065(a) is amended to read:

(a) **Notwithstanding** [SUBJECT TO AS 06.60.360(e), AND NOTWITHSTANDING] other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind to enforce a claim for

(A) child support;

(B) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

1 (C) state or local taxes;

2 (2) a creditor may make a levy against exempt property to enforce a
3 claim for

4 (A) the purchase price of the property or a loan made for the
5 express purpose of enabling an individual to purchase the property and used
6 for that purpose;

7 (B) labor or materials furnished to make, repair, improve,
8 preserve, store, or transport the property; and

9 (C) a special assessment imposed to defray costs of a public
10 improvement benefiting the property; and

11 (3) a creditor may make a levy against exempt property of any kind to
12 enforce the claim of a victim, including a judgment of restitution on behalf of a victim
13 of a crime or a delinquent act, if the claim arises from conduct of the debtor that
14 results in a conviction of a crime or an adjudication of delinquency, except that the
15 debtor is entitled to an exemption in property

16 (A) not to exceed an aggregate value of \$3,000 chosen by the
17 debtor from the following categories of property:

18 (i) household goods and wearing apparel reasonably
19 necessary for one household;

20 (ii) books and musical instruments, if reasonably held
21 for the personal use of the debtor or a dependent of the debtor; and

22 (iii) family portraits and heirlooms of particular
23 sentimental value to the debtor; and

24 (B) not to exceed an aggregate value of \$2,800 of the debtor's
25 implements, professional books, and tools of the trade.

26 * **Sec. 4.** AS 12.62.400 is amended to read:

27 **Sec. 12.62.400. National criminal history record checks for employment,**
28 **licensing, and other noncriminal justice purposes.** To obtain a national criminal
29 history record check for determining a person's qualifications for a license, permit,
30 registration, employment, or position, a person shall submit the person's fingerprints to
31 the department with the fee established by AS 12.62.160. The department may submit

the fingerprints to the Federal Bureau of Investigation to obtain a national criminal history record check of the person for the purpose of evaluating a person's qualifications for

(1) a license or conditional contractor's permit to manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage under AS 04.11;

(2) licensure as a mortgage lender, a mortgage broker, or an originator under AS 06.62 [AS 06.60];

(3) admission to the Alaska Bar Association under AS 08.08;

(4) licensure as a collection agency operator under AS 08.24;

(5) a certificate of fitness to handle explosives under AS 08.52;

(6) licensure to practice nursing or certification as a nurse aide under AS 08.68;

(7) a position involving supervisory or disciplinary power over a minor or dependent adult for which criminal justice information may be released under AS 12.62.160(b)(9);

(8) a teacher certificate under AS 14.20;

(9) licensure as a security guard under AS 18.65.400 - 18.65.490;

(10) a concealed handgun permit under AS 18.65.700 - 18.65.790;

(11) licensure as an insurance producer, managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, or independent adjuster under AS 21.27;

(12) serving and executing process issued by a court by a person designated under AS 22.20.130;

(13) a school bus driver license under AS 28.15.046;

(14) licensure as an operator or an instructor for a commercial driver training school under AS 28.17;

(15) registration as a broker-dealer, agent, investment adviser representative, or state investment adviser under AS 45.55.030 - 45.55.060.

* **Sec. 5.** AS 12.62.400 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, an applicant for a license under

AS 06.62 may submit the applicant's fingerprints to the Nationwide Mortgage Licensing System and Registry. In this section, "Nationwide Mortgage Licensing System and Registry" has the meaning given in 12 U.S.C. 5102(5).

* **Sec. 6.** AS 44.62.330(a)(48) is amended to read:

(48) Department of Commerce, Community, and Economic Development relating to mortgage lending under **AS 06.62** [AS 06.60].

* **Sec. 7.** AS 44.64.030(a)(5) is amended to read:

(5) AS 06 (banks, financial institutions, and fund claims), except as provided otherwise by **AS 06.62.170** [AS 06.60.590];

* **Sec. 8.** AS 45.50.471(b)(52) is amended to read:

(52) violating **the duties, restrictions, and licensing requirements that apply under AS 06.62 to a person who does business in the state as a mortgage lender, mortgage broker, or mortgage loan originator** [AS 06.60.010 - 06.60.380 (MORTGAGE LENDING REGULATION)];

* **Sec. 9.** AS 45.50.481(c) is amended to read:

(c) The exemption in (a)(1) of this section does not apply to an act or transaction regulated under **AS 06.62** [AS 06.60].

* **Sec. 10.** AS 06.60.010, 06.60.015, 06.60.017, 06.60.020, 06.60.025, 06.60.026, 06.60.027, 06.60.030, 06.60.035, 06.60.040, 06.60.045, 06.60.050, 06.60.060, 06.60.065, 06.60.070, 06.60.075, 06.60.080, 06.60.085, 06.60.090, 06.60.095, 06.60.097, 06.60.100, 06.60.105, 06.60.110, 06.60.115, 06.60.120, 06.60.130, 06.60.135, 06.60.140, 06.60.145, 06.60.150, 06.60.155, 06.60.157, 06.60.159, 06.60.160, 06.60.200, 06.60.210, 06.60.230, 06.60.240, 06.60.250, 06.60.260, 06.60.270, 06.60.280, 06.60.320, 06.60.330, 06.60.340, 06.60.350, 06.60.360, 06.60.370, 06.60.380, 06.60.400, 06.60.410, 06.60.420, 06.60.430, 06.60.440, 06.60.500, 06.60.510, 06.60.520, 06.60.530, 06.60.540, 06.60.550, 06.60.560, 06.60.570, 06.60.580, 06.60.590, 06.60.600, 06.60.610, 06.60.620, 06.60.630, 06.60.640, 06.60.650, 06.60.660, 06.60.670, 06.60.680, 06.60.690, 06.60.700, 06.60.710, 06.60.720, 06.60.730, 06.60.740, 06.60.745, 06.60.750, 06.60.800, 06.60.810, 06.60.850, 06.60.860, 06.60.890, 06.60.895, 06.60.900, 06.60.905, 06.60.910, 06.60.920, 06.60.990, 06.60.995; and AS 09.38.015(e) are repealed.

* **Sec. 11.** The uncoded law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: EXISTING LICENSES ISSUED UNDER FORMER AS 06.60. (a) A
3 person holding a valid license issued under former AS 06.60 as of the effective date of sec. 2
4 of this Act may continue to operate under that license until the license expires, is revoked, or
5 is suspended, and AS 06.62, as enacted by sec. 2 of this Act, including its provisions on
6 expiration, renewal, prohibitions, revocation, suspension, and enforcement, apply to the
7 license and to the person's operation under the license.

8 (b) In (a) of this section, "AS 06.62" means AS 06.62 and the regulations adopted
9 under AS 06.62.

10 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
13 Economic Development may adopt regulations necessary to implement the changes made by
14 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
15 before July 1, 2010.

16 * **Sec. 13.** Section 12 of this Act takes effect immediately under AS 01.10.070(c).

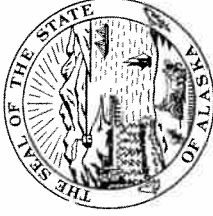
17 * **Sec. 14.** Except as provided in sec. 13 of this Act, this Act takes effect July 1, 2010.

ALASKA STATE LEGISLATURE

Senator Joe Paskvan

Chair, Labor and Commerce
Vice Chair, Health and Social Services
Member, Transportation
Member, State Affairs
Member, Joint Armed Services

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Side by Side of CSSB 149 and SB 149 with Reasons for Revisions

CSSB 149 "An Act relating to the regulation of residential real property mortgage lending, including the licensing of mortgage lenders, mortgage brokers, and mortgage loan originators and compliance with certain federal laws relating to residential mortgage lending; and providing for an effective date."	
CS for SB 149 Text	Reasons for Revisions
<p>* Section 1. AS 06.01.050(3) is amended to read:</p> <p>(3) "financial institution" means an institution subject to the regulation of the department under this title; in this paragraph, "institution" includes a commercial bank, savings bank, credit union, premium finance company, small loan company, bank holding company, financial holding company, trust company, savings and loan association, deferred deposit advance licensee under AS 06.50, <u>and</u> a licensee under <u>AS 06.62</u></p> <p><i>[AS 06.60. A SMALL MORTGAGE LENDER UNDER AS 06.60, AND AN ORIGINATOR UNDER AS 06.60 WHO IS EMPLOYED BY OR WORKS UNDER EXCLUSIVE CONTRACT FOR A SMALL MORTGAGE LENDER; IN THIS PARAGRAPH, (A) "LICENSEE UNDER AS 06.60" HAS THE MEANING GIVEN TO "LICENSEE" IN AS 06.60.990; (B) "ORIGINATOR UNDER AS 06.60" HAS THE</i></p>	<p>* Section 1. AS 06.01.050(3) is amended to read:</p> <p>(3) "financial institution" means an institution subject to the regulation of the department under this title; in this paragraph, "institution" includes a commercial bank, savings bank, credit union, premium finance company, small loan company, bank holding company, financial holding company, trust company, savings and loan association, deferred deposit advance licensee under AS 06.50, <u>and</u> a licensee under <u>AS 06.62</u></p> <p><i>[AS 06.60. A SMALL MORTGAGE LENDER UNDER AS 06.60, AND AN ORIGINATOR UNDER AS 06.60 WHO IS EMPLOYED BY OR WORKS UNDER EXCLUSIVE CONTRACT FOR A SMALL MORTGAGE LENDER; IN THIS PARAGRAPH, (A) "LICENSEE UNDER AS 06.60" HAS THE MEANING GIVEN TO "LICENSEE" IN AS 06.60.990; (B) "ORIGINATOR UNDER AS 06.60" HAS THE</i></p>

MEANING GIVEN TO "ORIGINATOR" IN AS 06.60.990; (C) "SMALL MORTGAGE LENDER UNDER AS 06.60" HAS THE MEANING GIVEN TO "SMALL MORTGAGE LENDER" IN AS 06.60.990];		MEANING GIVEN TO "ORIGINATOR" IN AS 06.60.990; (C) "SMALL MORTGAGE LENDER UNDER AS 06.60" HAS THE MEANING GIVEN TO "SMALL MORTGAGE LENDER" IN AS 06.60.990];
* Section 2. AS 06 is amended by adding a new chapter to read: Chapter 62. Regulation of Mortgage Lending.		* Section 2. AS 06 is amended by adding a new chapter to read: Chapter 62. Regulation of Mortgage Lending.
Article 1. Regulation of Mortgage Lending.		Article 1. Regulation of Mortgage Lending.
Sec. 06.62.010. Regulation of mortgage lending. The department shall regulate mortgage lending activities in the state, including regulating a person operating as a mortgage lender, mortgage broker, or mortgage loan originator. <u>In this section, "doing business in the state" includes doing business in the state from a location outside the state or from an Internet website that originates inside or outside the state.</u>	Clarifies what "doing business in the state" means and includes mortgage loan originators who work through an Internet website.	Sec. 06.62.010. Regulation of mortgage lending. The department shall regulate mortgage lending activities in the state, including regulating a person operating as a mortgage lender, mortgage broker, or mortgage loan originator.
Sec. 06.62.020. Duties of the department. The department shall adopt regulations necessary to implement, interpret, or make specific this chapter, including provisions relating to (1) licensing of a mortgage lender, mortgage broker, or mortgage loan originator, including submission of fingerprints for criminal history background checks for an applicant or licensee; (2) examination, investigation, and discipline of a person required to be licensed under this chapter; (3) competency testing and continuing education requirements for persons required to be licensed under this chapter; (4) mortgage business duties and restrictions; (5) compliance with federal requirements, including 12 U.S.C. 5101 - 5116 (Secure and Fair Enforcement for Mortgage Licensing Act of 2008); (6) compliance with the requirements of the		Sec. 06.62.020. Duties of the department. The department shall adopt regulations necessary to implement, interpret, or make specific this chapter, including provisions relating to (1) licensing of a mortgage lender, mortgage broker, or mortgage loan originator, including submission of fingerprints for criminal history background checks for an applicant or licensee; (2) examination, investigation, and discipline of a person required to be licensed under this chapter; (3) competency testing and continuing education requirements for persons required to be licensed under this chapter; (4) mortgage business duties and restrictions; (5) compliance with federal requirements, including 12 U.S.C. 5101 - 5116 (Secure and Fair Enforcement for Mortgage Licensing Act of 2008); (6) compliance with the requirements of the

Nationwide Mortgage Licensing System and Registry for licensing by the state of mortgage lenders, mortgage brokers, and mortgage loan originators; in this paragraph, "Nationwide Mortgage Licensing System and Registry" has the meaning given in 12 U.S.C. § 5102(5);		Nationwide Mortgage Licensing System and Registry for licensing by the state of mortgage lenders, mortgage brokers, and mortgage loan originators; in this paragraph, "Nationwide Mortgage Licensing System and Registry" has the meaning given in 12 U.S.C. § 5102(5);
(7) enforcement of provisions of law relating to mortgage lending <u>including enforcement by cease and desist orders, censure orders, removal orders, penalty assessments, license suspensions, license revocations, rescission orders, disgorgement orders, restitution orders, summary orders, temporary orders, and orders barring persons form certain positions;</u>	Adds explicit statutory authority for these enforcement activities. Current law provides for these enforcement activities in AS 06.60.400 through AS 06.60.430.	(7) enforcement of provisions of law relating to mortgage lending;
(8) administration of the provisions of AS 06.62.100 – 06.62.180, relating to the mortgage loan originator surety fund, and AS 06.62.200, relating to a program administration fee; and		(8) administration of the provisions of AS 06.62.100 – 06.62.180, relating to the mortgage loan originator surety fund, and AS 06.62.200, relating to a program administration fee; and
(9) the assessment of fees and other charges, including fund fees, late payment penalties, and the reimbursement of investigation and examination expenses related to the regulation of mortgage lending activities.		(9) the assessment of fees and other charges, including fund fees, late payment penalties, and the reimbursement of investigation and examination expenses related to the regulation of mortgage lending activities.
Article 2. Mortgage Loan Originator Surety Fund.		Article 2. Mortgage Loan Originator Surety Fund.
Sec. 06.62.100. Mortgage loan originator surety fund. The mortgage loan originator surety fund is established as a separate account in the general fund. The purpose of the fund is to pay fund claims against mortgage originator licensees.		Sec. 06.62.100. Mortgage loan originator surety fund. The mortgage loan originator surety fund is established as a separate account in the general fund. The purpose of the fund is to pay fund claims against mortgage originator licensees.
Sec. 06.62.110. Composition of fund. The fund consists of payments made by mortgage loan originator licensees under AS 06.62.120, filing fees for fund claims, income earned on the investment of the money in the fund, and money appropriated to the fund.		Sec. 06.62.110. Composition of fund. The fund consists of payments made by mortgage loan originator licensees under AS 06.62.120, filing fees for fund claims, income earned on the investment of the money in the fund, and money appropriated to the fund.
Sec. 06.62.120. Required fund fees. A person who applies for or renews a mortgage loan originator		Sec. 06.62.120. Required fund fees. A person who applies for or renews a mortgage loan originator

license shall pay to the department a fee established by the department.		license shall pay to the department a fee established by the department.
Sec. 06.62.130. Maximum liability. (a) Payment of a fund claim out of the fund may not exceed \$15,000 for each claimant and \$15,000 for each mortgage loan transaction regardless of the number of persons injured or the number of pieces of residential real property involved in the mortgage loan transaction.		Sec. 06.62.130. Maximum liability. (a) Payment of a fund claim out of the fund may not exceed \$15,000 for each claimant and \$15,000 for each mortgage loan transaction regardless of the number of persons injured or the number of pieces of residential real property involved in the mortgage loan transaction.
(b) The liability of the fund for claims against one mortgage loan originator licensee may not exceed \$50,000.		(b) The liability of the fund for claims against one mortgage loan originator licensee may not exceed \$50,000.
(c) If the liability limit under (b) of this section is insufficient to pay in full the valid fund claims of all persons who have filed fund claims regarding one mortgage loan originator licensee, the \$50,000 shall be distributed among the claimants in the ratio that their individual fund claims bear to the aggregate of valid claims against that mortgage loan originator licensee. The department shall distribute the money among the persons entitled to share in the recovery without regard to the order in which their fund claims were filed.		(c) If the liability limit under (b) of this section is insufficient to pay in full the valid fund claims of all persons who have filed fund claims regarding one mortgage loan originator licensee, the \$50,000 shall be distributed among the claimants in the ratio that their individual fund claims bear to the aggregate of valid claims against that mortgage loan originator licensee. The department shall distribute the money among the persons entitled to share in the recovery without regard to the order in which their fund claims were filed.
Sec. 06.62.135. Other rights of claimant. The rights granted to a claimant under AS 06.62.100 – 06.62.180 do not limit any other cause of action the claimant may have against a mortgage loan originator.	States explicitly that making a claim against the mortgage loan originator surety fund does not prevent a claimant from pursuing another cause of action against the mortgage loan originator.	
Sec. 06.62.140. Election to use small claims court. (a) Within thirty days after receiving a copy of a fund claim under this chapter, the mortgage loan originator licensee against whom the claim is made may elect to defend the fund claim as a small claims action in district court under District Court Rules of Civil Procedure if the claim does not exceed the small claims jurisdictional limit.		Sec. 06.62.140. Election to use small claims court. (a) Within thirty days after receiving a copy of a fund claim under this chapter, the mortgage loan originator licensee against whom the claim is made may elect to defend the fund claim as a small claims action in district court under District Court Rules of Civil Procedure if the claim does not exceed the small claims jurisdictional limit.
(b) A mortgage loan originator licensee who elects under (a) of this section to defend a fund claim in district court under the small claims rules may not revoke the election without the consent of the person who filed the fund claim.		(b) A mortgage loan originator licensee who elects under (a) of this section to defend a fund claim in district court under the small claims rules may not revoke the election without the consent of the person who filed the fund claim.
(c) On receipt of a valid written election under (a)		(c) On receipt of a valid written election under (a)

of this section, the department shall dismiss the fund claim filed with the department and notify the person who filed the fund claim that the fund claim will not be reimbursed by the fund, but that the person who filed the fund claim may bring a small claims action in the appropriate district court.		of this section, the department shall dismiss the fund claim filed with the department and notify the person who filed the fund claim that the fund claim will not be reimbursed by the fund, but that the person who filed the fund claim may bring a small claims action in the appropriate district court.
Sec. 06.62.150. False claims or documents. A person who knowingly files a notice, statement, or other document under AS 06.62.100 - 06.62.160 that contains a material misstatement of fact is guilty of a class A misdemeanor. [IN THIS SECTION, "KNOWINGLY" HAS THE MEANING GIVEN IN AS 11.81.900.]	Deletes the definition of "knowingly," which is moved to Sec. 06.62.400, the Definitions section of this bill.	Sec. 06.62.150. False claims or documents. A person who knowingly files a notice, statement, or other document under AS 06.62.100 - 06.62.160 that contains a material misstatement of fact is guilty of a class A misdemeanor. In this section, "knowingly" has the meaning given in AS 11.81.900.
Sec. 06.62.160. Right to subrogation. When the department has paid fund money to a claimant, the department shall be subrogated to all of the rights of the claimant to the amount paid, and the claimant shall assign all right, title, and interest in that portion of the claim to the department. [THE DEPARTMENT SHALL DEPOSIT IN THE FUND THE MONEY COLLECTED BY THE DEPARTMENT UNDER THIS SECTION ON THE CLAIM.]		Sec. 06.62.160. Right to subrogation. When the department has paid fund money to a claimant, the department shall be subrogated to all of the rights of the claimant to the amount paid, and the claimant shall assign all right, title, and interest in that portion of the claim to the department. The department shall deposit in the fund the money collected by the department under this section on the claim.
Sec. 06.62.170. Claim hearing. Except as otherwise provided by AS 06.62.140, a hearing on a fund claim shall be handled by the office of administrative hearings (AS 44.64.010).		Sec. 06.62.170. Claim hearing. Except as otherwise provided by AS 06.62.140, a hearing on a fund claim shall be handled by the office of administrative hearings (AS 44.64.010).
Sec. 06.62.180. Definition. In AS 06.62.100 - 06.62.180, "fund claim" means a claim against the fund.		Sec. 06.62.180. Definition. In AS 06.62.100 - 06.62.180, "fund claim" means a claim against the fund.
Article 3. Program Administration Fee.		Article 3. Program Administration Fee.
Sec. 06.62.200. Authorization of program administration fee. (a) The department may establish and collect a program administration fee for each mortgage loan transaction to reimburse the state for the cost of administering this chapter.		Sec. 06.62.200. Authorization of program administration fee. (a) The department may establish and collect a program administration fee for each mortgage loan transaction to reimburse the state for the cost of administering this chapter.
(b) The program administration fee shall be paid by a borrower who is providing real property as security for the mortgage loan, except that, if the		(b) The program administration fee shall be paid by a borrower who is providing real property as security for the mortgage loan, except that, if the

regulations of a federal or state loan program that insures the loan and that applies to the mortgage loan transaction prohibits the borrower from paying the program administration fee, another party to the mortgage loan transaction shall pay the program administration fee.		
(c) If there are multiple mortgage loan instruments recorded for a single mortgage loan transaction, the department shall collect only one program administration fee.	(c) If there are multiple mortgage loan instruments recorded for a single mortgage loan transaction, the department shall collect only one program administration fee.	
(d) The program administration fees collected under this section shall be separately accounted for and may be appropriated by the legislature to the department for the operation of this chapter.	(d) The program administration fees collected under this section shall be separately accounted for and may be appropriated by the legislature to the department for the operation of this chapter.	
(e) In this section, "mortgage loan instrument" means a deed of trust, mortgage, or another loan instrument recorded to encumber residential real property in the state.	(e) In this section, "mortgage loan instrument" means a deed of trust, mortgage, or another loan instrument recorded to encumber residential real property in the state.	
Article 4. Examination and Enforcement.	Article 4. Examination and Enforcement.	
Sec. 06.62.300. Examination. Notwithstanding AS 06.01.015, the department may conduct an examination every 36 months for a person required to be licensed under this chapter. The department may conduct an examination more often if the examination is part of the review of a complaint or other information received by the department concerning the person.	Sec. 06.62.300. Examination. Notwithstanding AS 06.01.015, the department may conduct an examination every 36 months for a person required to be licensed under this chapter. The department may conduct an examination more often if the examination is part of the review of a complaint or other information received by the department concerning the person.	
Sec. 06.62.310. Unfair trade practices and consumer protection. (a) This chapter may not be interpreted to prevent the attorney general or any other person from exercising the rights provided under AS 45.50.471 - 45.50.561.	Sec. 06.62.310. Unfair trade practices and consumer protection. (a) This chapter may not be interpreted to prevent the attorney general or any other person from exercising the rights provided under AS 45.50.471 - 45.50.561.	
(b) If the department determines that a licensee or a person acting on behalf of the licensee is in violation of, or has violated, a provision of this chapter or the regulations adopted under this chapter, the department may refer the information to the attorney general and request that the attorney general investigate the	(b) If the department determines that a licensee or a person acting on behalf of the licensee is in violation of, or has violated, a provision of this chapter or the regulations adopted under this chapter, the department may refer the information to the attorney general and request that the attorney general investigate the	

violation under AS 45.50.495. The attorney general may enjoin a violation of this chapter and may seek restitution, rescission, and other relief as allowed by law.		violation under AS 45.50.495. The attorney general may enjoin a violation of this chapter and may seek restitution, rescission, and other relief as allowed by law.
(c) In addition to another investigation allowed under this chapter, the department may conduct other examinations, periodic audits, special audits, investigations, and hearings as may be necessary and proper for the efficient administration of this chapter.		(c) In addition to another investigation allowed under this chapter, the department may conduct other examinations, periodic audits, special audits, investigations, and hearings as may be necessary and proper for the efficient administration of this chapter.
<u>Sec. 06.62.320. Publication of disciplinary action.</u> The department may release for publication on the Internet and in the area where a person who is required to be licensed under this chapter operates as a mortgage lender, mortgage broker, or mortgage loan originator a notice of disciplinary action taken by the department against the person.	Gives explicit statutory authority to the department to publish disciplinary actions. This provision is found in current law at AS 06.60.850.	
<u>Sec. 06.62.330 Department list.</u> The department may make available to the public a list of all persons who are licensed under this chapter and who have been censured, who have been barred from holding a position, or who have had their licenses suspended or revoked under this chapter. The department shall update the list on a monthly basis.	Gives explicit statutory authority to the department to make public, and to keep current on a monthly basis, a list of licensees who have been censured, barred from holding a position, or who have had their licenses suspended or revoked. This provision is found in current law at AS 06.60.280.	
<u>Sec. 06.62.340. Criminal Penalties.</u> (a) The department may report violations under (b) – (e) of this section to the attorney general, who may take action to enforce the criminal penalties provided in (b) – (e) of this section.	Sections 06.62.340 through 06.62.360 give explicit statutory authority for the imposition of criminal and civil penalties, and provide that the remedies provided by this chapter are not exclusive and may be sought in combination with other remedies available under law. These sections are taken from current law and can be found at AS 06.60.370 and AS 06.60.420 - .430.	
(b) A person who knowingly provides false or misleading information to the department that is material under this chapter is guilty of a class A misdemeanor.		
(c) A person who is required to be licensed under this chapter and who knowingly fails to account for or deliver to a person money, deposits, or checks or other forms of negotiable instruments in violation of this		

chapter is guilty of a class A misdemeanor.		
(d) A person who is required to be licensed under this chapter and who knowingly fails to disburse money belonging to a borrower without just cause is guilty of a class A misdemeanor.		
(e) Unless the person is except from licensing under this chapter, a person who knowingly does business in this state as a mortgage lender, mortgage broker, or mortgage loan originator without a license issued under this chapter is guilty of a class A misdemeanor.	The word "except" should read "exempt."	
<u>Sec. 06.62.350. Civil Penalty.</u> A person who violates this chapter, a regulation adopted under this chapter, or an order issued under this chapter is liable to the state for a civil penalty not to exceed \$10,000 for each violation.		
<u>Sec. 06.62.360. Remedies not exclusive.</u> The remedies provided by this chapter are not exclusive and may be sought in combination with other remedies available under law to enforce this chapter.		
Article 5. General Provisions.		Article 5. General Provisions.
Sec. 06.62.400. Definitions. In this chapter, unless the context otherwise requires,		Sec. 06.62.400. Definitions. In this chapter, unless the context otherwise requires,
(1) "department" means the Department of Commerce, Community, and Economic Development.		(1) "department" means the Department of Commerce, Community, and Economic Development.
(2) "fund" means the mortgage loan originator surety fund established under AS 06.62.100.		(2) "fund" means the mortgage loan originator surety fund established under AS 06.62.100.
(3) In this chapter, "knowingly" has the meaning given in AS 11.81.900.	Moves the definition of "knowingly" to this definitions section.	
* Section 3. AS 09.38.065(a) is amended to read: (a) Notwithstanding [SUBJECT TO AS 06.60.360(e), AND NOTWITHSTANDING] other provisions of this chapter, (1) a creditor may make a levy against exempt property of any kind to enforce a claim for		* Section 3. AS 09.38.065(a) is amended to read: (a) Notwithstanding [SUBJECT TO AS 06.60.360(e), AND NOTWITHSTANDING] other provisions of this chapter, (1) a creditor may make a levy against exempt property of any kind to enforce a claim for

<p>(A) child support; (B) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or (C) state or local taxes; (2) a creditor may make a levy against exempt property to enforce a claim for (A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and used for that purpose; (B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and (C) a special assessment imposed to defray costs of a public improvement benefiting the property; and (3) a creditor may make a levy against exempt property of any kind to enforce the claim of a victim, including a judgment of restitution on behalf of a victim of a crime or a delinquent act, if the claim arises from conduct of the debtor that results in a conviction of a crime or an adjudication of delinquency, except that the debtor is entitled to an exemption in property (A) not to exceed an aggregate value of \$3,000 chosen by the debtor from the following categories of property: (i) household goods and wearing apparel reasonably necessary for one household; (ii) books and musical instruments, if reasonably held for the personal use of the debtor or a dependent of the debtor; and (iii) family portraits and heirlooms of particular sentimental value to the debtor; and (B) not to exceed an aggregate value of \$2,800 of the debtor's implements, professional</p>		
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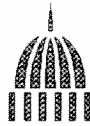
<p>books, and tools of the trade.</p>		<p>enabling an individual to purchase the property and used for that purpose;</p> <p>(B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and</p> <p>(C) a special assessment imposed to defray costs of a public improvement benefiting the property; and</p> <p>(3) a creditor may make a levy against exempt property of any kind to enforce the claim of a victim, including a judgment of restitution on behalf of a victim of a crime or a delinquent act, if the claim arises from conduct of the debtor that results in a conviction of a crime or an adjudication of delinquency, except that the debtor is entitled to an exemption in property</p> <p>(A) not to exceed an aggregate value of \$3,000 chosen by the debtor from the following categories of property:</p> <ul style="list-style-type: none"> (i) household goods and wearing apparel reasonably necessary for one household; (ii) books and musical instruments, if reasonably held for the personal use of the debtor or a dependent of the debtor; and (iii) family portraits and heirlooms of particular sentimental value to the debtor; and <p>(B) not to exceed an aggregate value of \$2,800 of the debtor's implements, professional books, and tools of the trade.</p>
<p>* Section 4. AS 12.62.400 is amended to read:</p> <p>Sec. 12.62.400. National criminal history record checks for employment, licensing, and other noncriminal justice purposes. To obtain a national criminal history record check for determining a person's qualifications for a license, permit, registration, employment, or position, a person shall submit the person's fingerprints to the department with the fee established by AS 12.62.160. The department</p>	<p>* Section 4. AS 12.62.400 is amended to read:</p> <p>Sec. 12.62.400. National criminal history record checks for employment, licensing, and other noncriminal justice purposes. To obtain a national criminal history record check for determining a person's qualifications for a license, permit, registration, employment, or position, a person shall submit the person's fingerprints to the department with the fee established by AS 12.62.160. The department</p>	<p>* Section 4. AS 12.62.400 is amended to read:</p> <p>Sec. 12.62.400. National criminal history record checks for employment, licensing, and other noncriminal justice purposes. To obtain a national criminal history record check for determining a person's qualifications for a license, permit, registration, employment, or position, a person shall submit the person's fingerprints to the department with the fee established by AS 12.62.160. The department</p>

<p>may submit the fingerprints to the Federal Bureau of Investigation to obtain a national criminal history record check of the person for the purpose of evaluating a person's qualifications for</p> <ul style="list-style-type: none"> (1) a license or conditional contractor's permit to manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage under AS 04.11; (2) licensure as a mortgage lender, a mortgage broker, or an originator under AS 06.62 [AS 06.60]; (3) admission to the Alaska Bar Association under AS 08.08; (4) licensure as a collection agency operator under AS 08.24; (5) a certificate of fitness to handle explosives under AS 08.52; (6) licensure to practice nursing or certification as a nurse aide under AS 08.68; (7) a position involving supervisory or disciplinary power over a minor or dependent adult for which criminal justice information may be released under AS 12.62.160 (b)(9); (8) a teacher certificate under AS 14.20; (9) licensure as a security guard under AS 18.65.400 - 18.65.490; (10) a concealed handgun permit under AS 18.65.700 - 18.65.790; (11) licensure as an insurance producer, managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, or independent adjuster under AS 21.27; (12) serving and executing process issued by a court by a person designated under AS 22.20.130 ; (13) a school bus driver license under AS 28.15.046; (14) licensure as an operator or an instructor for a commercial driver training school under AS 28.17; (15) registration as a broker-dealer, agent, investment adviser representative, or state investment adviser under AS 45.55.030 - 45.55.060. <p>* Section 5. AS 12.62.400 is amended by adding a new subsection to read:</p> <p>(b) Notwithstanding (a) of this section, an</p>		
<p>This complies with the new federal law by authorizing the department to have license applicants submit their fingerprints to the National Mortgage</p>		

applicant for a license under AS 06.62 may submit the applicant's fingerprints to the Nationwide Mortgage Licensing System and Registry. In this section, "Nationwide Mortgage Licensing System and Registry" has the meaning given in 12 U.S.C. 5102(5).		
* Section 6. AS 44.62.330(a)(48) is amended to read: (48) Department of Commerce, Community, and Economic Development relating to mortgage lending under <u>AS 06.62</u> [AS 06.60].		* Section 5. AS 44.62.330(a)(48) is amended to read: (48) Department of Commerce, Community, and Economic Development relating to mortgage lending under <u>AS 06.62</u> [AS 06.60].
* Section 7. AS 44.64.030(a)(5) is amended to read: (5) AS 06 (banks, financial institutions, and fund claims), except as provided otherwise by <u>AS 06.62.170</u> [AS 06.60.590];		* Section 6. AS 44.64.030(a)(5) is amended to read: (5) AS 06 (banks, financial institutions, and fund claims), except as provided otherwise by <u>AS 06.62.170</u> [AS 06.60.590];
* Section 8. AS 45.50.471(b)(52) is amended to read: (52) violating <u>the duties, restrictions, and licensing requirements that apply under AS 06.62 to a person who does business in the state as a mortgage lender, mortgage broker, or mortgage loan originator</u> [AS 06.60.010 - 06.60.380 (MORTGAGE LENDING REGULATION)];	This limits application of the Unfair Trade Practices and Consumer Protection Act to those portions of the Alaska Mortgage Lending Regulation Act which deal with licensee duties, restrictions and licensing requirements.	* Section 7. AS 45.50.471(b)(52) is amended to read: (52) violating <u>AS 06.62</u> [AS 06.60.010 - 06.60.380] (mortgage lending regulation);
* Section 9. AS 45.50.481(c) is amended to read: (c) The exemption in (a)(1) of this section does not apply to an act or transaction regulated under <u>AS 06.62</u> [AS 06.60].		* Section 8. AS 45.50.481(c) is amended to read: (c) The exemption in (a)(1) of this section does not apply to an act or transaction regulated under <u>AS 06.62</u> [AS 06.60].
* Section 10. AS 06.60.010, 06.60.015, 06.60.017, 06.60.020, 06.60.025, 06.60.026, 06.60.027, 06.60.030, 06.60.035, 06.60.040, 06.60.045, 06.60.050, 06.60.060, 06.60.065, 06.60.070, 06.60.075, 06.60.080, 06.60.085, 06.60.090, 06.60.095, 06.60.097, 06.60.100, 06.60.105, 06.60.110, 06.60.115, 06.60.120, 06.60.130, 06.60.135, 06.60.140, 06.60.145, 06.60.150, 06.60.155, 06.60.157, 06.60.159, 06.60.160, 06.60.200, 06.60.210, 06.60.230, 06.60.240, 06.60.250, 06.60.260, 06.60.270, 06.60.280, 06.60.320, 06.60.330, 06.60.340, 06.60.350,		* Section 9. AS 06.60.010, 06.60.015, 06.60.017, 06.60.020, 06.60.025, 06.60.026, 06.60.027, 06.60.030, 06.60.035, 06.60.040, 06.60.045, 06.60.050, 06.60.060, 06.60.065, 06.60.070, 06.60.075, 06.60.080, 06.60.085, 06.60.090, 06.60.095, 06.60.097, 06.60.100, 06.60.105, 06.60.110, 06.60.115, 06.60.120, 06.60.130, 06.60.135, 06.60.140, 06.60.145, 06.60.150, 06.60.155, 06.60.157, 06.60.159, 06.60.160, 06.60.200, 06.60.210, 06.60.230, 06.60.240, 06.60.250, 06.60.260, 06.60.270, 06.60.280, 06.60.320, 06.60.330, 06.60.340, 06.60.350,

06.60.360, 06.60.370, 06.60.380, 06.60.400, 06.60.410, 06.60.420, 06.60.430, 06.60.440, 06.60.500, 06.60.510, 06.60.520, 06.60.530, 06.60.540, 06.60.550, 06.60.560, 06.60.570, 06.60.580, 06.60.590, 06.60.600, 06.60.610, 06.60.620, 06.60.630, 06.60.640, 06.60.650, 06.60.660, 06.60.670, 06.60.680, 06.60.690, 06.60.700, 06.60.710, 06.60.720, 06.60.730, 06.60.740, 06.60.745, 06.60.750, 06.60.800, 06.60.810, 06.60.850, 06.60.860, 06.60.890, 06.60.895, 06.60.900, 06.60.905, 06.60.910, 06.60.920, 06.60.990, 06.60.995, <u>and</u> AS 09.38.015(e) [AND AS 12.62.400(2)] are repealed.	AS 12.62.400(2) is preserved. If the department wishes to submit the fingerprints of a license applicant to the FBI to obtain a national criminal history record check for purposes of evaluating the person's qualifications for licensure as a mortgage lender, broker or originator, this authority is retained. States have the right to perform background checks in addition to those required to be performed by the National Mortgage Licensing System.	06.60.155, 06.60.157, 06.60.159, 06.60.160, 06.60.200, 06.60.210, 06.60.230, 06.60.240, 06.60.250, 06.60.260, 06.60.270, 06.60.280, 06.60.320, 06.60.330, 06.60.340, 06.60.350, 06.60.360, 06.60.370, 06.60.380, 06.60.400, 06.60.410, 06.60.420, 06.60.430, 06.60.440, 06.60.500, 06.60.510, 06.60.520, 06.60.530, 06.60.540, 06.60.550, 06.60.560, 06.60.570, 06.60.580, 06.60.590, 06.60.600, 06.60.610, 06.60.620, 06.60.630, 06.60.640, 06.60.650, 06.60.660, 06.60.670, 06.60.680, 06.60.690, 06.60.700, 06.60.710, 06.60.720, 06.60.730, 06.60.740, 06.60.745, 06.60.750, 06.60.800, 06.60.810, 06.60.850, 06.60.860, 06.60.890, 06.60.895, 06.60.900, 06.60.905, 06.60.910, 06.60.920, 06.60.990, 06.60.995, AS 09.38.015(e), and AS 12.62.400(2) are repealed.
<p>* Section 11. The uncodified law of the State of Alaska is amended by adding a new section to read:</p> <p>TRANSITION: EXISTING LICENSES ISSUED UNDER FORMER AS 06.60.</p> <p>(a) a person holding a valid license issued under former AS 06.60 as of the effective date of sec. 2 of this Act may continue to operate under that license until the license expires, is revoked or is suspended, and AS 06.62, as enacted by sec. 2 of this Act, including its provisions on expiration, renewal, [EXPIRATION,] prohibitions, revocation, suspension, and enforcement, apply to the license and to the person's operation under the license.</p> <p>(b) In (a) of this section, "AS 06.62" means AS 06.62 and the regulations adopted under AS 06.62.</p>		<p>* Section 10. The uncodified law of the State of Alaska is amended by adding a new section to read:</p> <p>TRANSITION: EXISTING LICENSES ISSUED UNDER FORMER AS 06.60.</p> <p>(a) a person holding a valid license issued under former AS 06.60 as of the effective date of sec. 2 of this Act may continue to operate under that license until the license expires, is revoked or is suspended, and AS 06.62, as enacted by sec. 2 of this Act, including its provisions on expiration, renewal, expiration, prohibitions, revocation, suspension, and enforcement, apply to the license and to the person's operation under the license.</p> <p>(b) In (a) of this section, "AS 06.62" means AS 06.62 and the regulations adopted under AS 06.62.</p>

<p>* Section 12. The uncoded law of the State of Alaska is amended by adding a new section to read: TRANSITION: REGULATIONS. The Department of Commerce, Community, and Economic Development may adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2010.</p>		<p>* Section 11. The uncoded law of the State of Alaska is amended by adding a new section to read: TRANSITION: REGULATIONS. The Department of Commerce, Community, and Economic Development may adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2010.</p>
<p>* Section 13. Section 12 of this Act takes effect immediately under AS 01.10.070(c).</p>		<p>* Section 12. Section 11 of this Act takes effect immediately under AS 01.10.070(c).</p>
<p>* Section 14. Except as provided in sec. 13 of this Act, this Act takes effect July 1, 2010.</p>		<p>* Section 13. Except as provided in sec. 12 of this Act, this Act takes effect July 1, 2010.</p>



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

March 3, 2009

Honorable Gary L. Stevens
Senate President
Alaska Legislature
120 4th Street
State Capitol
Juneau, AK 99801-1182

Joe Hackney
Speaker of the House
North Carolina
President, NCSL

Gary VanLandingham
Director, Office of Program
Policy Analysis and Government
Accountability (OPPGA)
Staff Chair, NCSL

William T. Pound
Executive Director

Dear Senator Stevens:

We write on behalf of the National Conference of State Legislatures (NCSL) to respectfully urge your consideration of legislation in this legislative session to implement the federal Secure and Fair Enforcement (S.A.F.E.) for Mortgage Licensing Act. **If your state fails to act by July 31, 2009, your authority to license and regulate mortgage loan originators would be preempted.** Mortgage loan originators in any state that fails to act by July 31, 2009 would be licensed and regulated by the federal Department of Housing and Urban Development (HUD).

The S.A.F.E. Act was included in the Housing and Economic Recovery Act (H.R. 3221), signed into law on July 30, 2008. This provision requires that any residential mortgage originator must be either state-licensed or federally registered by July 31, 2009. A state not enacting legislation by July 31st, can be granted a two-year extension by HUD if they make a good faith effort to incorporate a state-licensing system by that date. In addition, states must ensure loan originators register with the Nationwide Mortgage Licensing System (NMLS) for accountability and transparency purposes.

The state-licensing system must meet several minimum requirements to maintain supervisory authority for loan originators. These include having a process to assess individuals acting as mortgage originators in their state without proper license or registration, criminal history and credit background checks, pre-licensure education and testing, establishing a minimum net worth or surety bonding requirements to reflect the dollar amount of loans by the originator and abiding by the obligations in the Nationwide Mortgage Licensing System, among others.

The Conference of State Banking Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) have created model state legislation which provides states with guidance in creating a system of licensure. This model state law (http://www.csbs.org/AM/Template.cfm?Section=SAFE_Act) addresses the aforementioned major standards under the S.A.F.E. Act which state regulatory agencies and mortgage loan originators must abide by. In January 2009, HUD reviewed the model legislation and determined that it met the minimum requirements of the S.A.F.E. Mortgage Licensing Act.

Pg. 2

March 3, 2009

We also must bring to your attention that in some states a version of the legislation may have been introduced that while purporting to implement the SAFE Act will actually dilute the minimum license requirements and will result in a state being determined to be out of compliance with the SAFE Act. This would allow HUD to then license and regulate the brokers in that state. We would urge you to review any legislation already introduced in your state to ensure that the legislation meets the minimum requirements as outlined in the CSBS model.

We appreciate the opportunity to bring this matter your attention. Should you have questions about our concerns, please contact Neal Osten at 202-624-8660 (neal.osten@ncsl.org) or Jeff Hurley at 202-624-7753 (Jeff.Hurley@ncsl.org) in NCSL's Washington office.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Hackney". The signature is fluid and cursive, with the first name "Joe" and last name "Hackney" clearly distinguishable.

Speaker Joe Hackney, NCSL President

Public Law 110-289
TITLE V—S.A.F.E. MORTGAGE LICENSING ACT
 “Secure and Fair Enforcement for Mortgage Licensing Act of 2008”

Mandates of P.L. 110-289

Industry

- All residential mortgage loan originators must be either state-licensed or federally registered.
 - A mortgage loan originator employed by a federally insured depository institution or any credit union or an owned and controlled subsidiary that is federally supervised must be registered.
 - All other mortgage loan originators, without exception, must be state licensed.
- All state licensed and federally registered mortgage loan originators must be registered with the Nationwide Mortgage Licensing System & Registry maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

States

- All states must have a system of licensing in place for residential mortgage loan originators by August 1, 2009 that meets national definitions and minimum standards, that include, among other things:
 - criminal history and credit background checks
 - pre-licensure education
 - pre-licensure testing
 - continuing education
 - net worth, surety bond or recovery fund
- All states must license mortgage loan originators through NML S&R.

U.S. Department of Housing and Urban Development (HUD)

- HUD must determine:
 - That the state's mortgage loan originator licensing standards meet the federally mandated minimums, and
 - That the state is participating in NML S&R.
- If HUD determines that a state not in compliance with both items above, HUD must implement a system for all state licensed mortgage loan originators in that state.

Federal Banking Agencies/Federal Financial Institutions Examination Council/Farm Credit Administration

- Must develop and maintain a system for registering employees of federally insured depositories and subsidiaries they own and control, and employees of Farm Credit Administration regulated entities, with NMLS&R. Registering with NMLS&R requires registered loan officers to submit fingerprints for a state and federal background check and personal history and experience.
- Shall coordinate with NMLS&R in assigning unique identifier.

Conference of State Bank Supervisors/American Association of Residential Mortgage Regulators

- CSBS and AARMR must develop and maintain the Nationwide Mortgage Licensing System and Registry for the purposes identified in the Section 1502 of P.L. 110-289.

Nationwide Mortgage Licensing System and Registry

- NMLS&R must establish protocols for the issuance of unique identifiers.
- NMLS&R must receive and process fingerprints for national and state criminal history background checks for all loan originators.
- NMLS&R must review and approve, using reasonable standards, pre-licensure and continuing education courses.
- NMLS&R must develop a qualified written test and approve test providers.
- NMLS&R must develop a mortgage call report.
- NMLS&R must provide public access to licensing information.

State Licensed Mortgage Loan Originator Requirements and Standards

Effective Date:

August 1, 2009

Definition:

Any individual who:

- Takes a residential mortgage loan application; or
- Offers or negotiates terms of a residential mortgage loan application for compensation or gain

The S.A.F.E. Mortgage Licensing Act of 2008 does not provide any exceptions to licensing for individuals conducting above activities. Real estate brokerage, loan processing and loan underwriting activities are not covered.

Licensing Requirements:

Mortgage Loan Originators must:

- Provide fingerprints for an FBI criminal history background check
- Provide authorization for NMLS&R to obtain a credit report
- Input and maintain their personal Mortgage Loan Originator record in NMLS&R as a their license in each state in which they wish to conduct loan origination activity
- Pass a national mortgage test
- Take 20 hours of pre-licensure education courses approved by NMLS&R. The education must include:
 - 3 hours of federal law and regulations
 - 3 hours of ethics, which must include fraud, consumer protection, and fair lending
 - 2 hours of standards on non-traditional mortgage lending

Licensing Standards:

All state-licensed Mortgage Loan Originators must meet the following standards:

- Never had a loan originator license revoked; and
- Has had no felonies in the past seven years; and
- Never had a felony involving fraud, dishonesty, breach of trust or money laundering; and
- Demonstrates financial responsibility and general fitness; and
- Scores 75% or better on a national test created by NMLS&R. The test will include:
 - Ethics
 - Federal law and regulation
 - State law and regulation
 - Federal and state law and regulation pertaining to fraud, consumer protection, nontraditional mortgages, and fair lending; and
- Takes eight hours of continuing education annually. The education must include:
 - 3 hours of federal law and regulations
 - 3 hours of ethics, which must include fraud, consumer protection, and fair lending
 - 2 hours of standards on non-traditional mortgage lending; and
- Maintain licensure through NMLS&R.

TITLE V—S.A.F.E. MORTGAGE LICENSING ACT

Sec. 1501. Short title.

Sec. 1502. Purposes and methods for establishing a mortgage licensing system and registry.

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Sec. 1509. Backup authority to establish a nationwide mortgage licensing and registry system.

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TITLE V—S.A.F.E. MORTGAGE LICENSING ACT

SEC. 1501. SHORT TITLE.

This title may be cited as the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or “S.A.F.E. Mortgage Licensing Act of 2008”.

SEC. 1502. PURPOSES AND METHODS FOR ESTABLISHING A MORTGAGE LICENSING SYSTEM AND REGISTRY.

In order to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are hereby encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry that accomplishes all of the following objectives:

- (1) Provides uniform license applications and reporting requirements for State-licensed loan originators.
- (2) Provides a comprehensive licensing and supervisory database.
- (3) Aggregates and improves the flow of information to and between regulators.
- (4) Provides increased accountability and tracking of loan originators.
- (5) Streamlines the licensing process and reduces the regulatory burden.
- (6) Enhances consumer protections and supports anti-fraud measures.
- (7) Provides consumers with easily accessible information, offered at no charge, utilizing

electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.

(8) Establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.

(9) Facilitates responsible behavior in the subprime mortgage market place and provides comprehensive training and examination requirements related to subprime mortgage lending.

(10) Facilitates the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.

SEC. 1503. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) **FEDERAL BANKING AGENCIES.**—The term “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(2) **DEPOSITORY INSTITUTION.**—The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(3) **LOAN ORIGINATOR.**—

(A) **IN GENERAL.**—The term “loan originator”—

(i) means an individual who—

(I) takes a residential mortgage loan application; and

(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;

(ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause;

(iii) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator; and

(iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.

(B) **OTHER DEFINITIONS RELATING TO LOAN ORIGINATOR.**—For purposes of this subsection, an individual “assists a consumer in obtaining or applying to obtain a

residential mortgage loan” by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(C) ADMINISTRATIVE OR CLERICAL TASKS.—The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) REAL ESTATE BROKERAGE ACTIVITY DEFINED.—The term “real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including—

- (i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);
- (iv) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
- (v) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), or (iv).

(4) LOAN PROCESSOR OR UNDERWRITER.—

(A) IN GENERAL.—The term “loan processor or underwriter” means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—

- (i) a State-licensed loan originator; or
- (ii) a registered loan originator.

(B) CLERICAL OR SUPPORT DUTIES.—For purposes of subparagraph (A), the term “clerical or support duties” may include—

- (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
- (ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(5) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed loan originators and the registration of registered loan

originators or any system established by the Secretary under section 1509.

(6) NONTRADITIONAL MORTGAGE PRODUCT.—

The term “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(7) REGISTERED LOAN ORIGINATOR.—The term “registered loan originator” means any individual who—

(A) meets the definition of loan originator and is an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(8) RESIDENTIAL MORTGAGE LOAN.—The term “residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(9) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.

(10) STATE.—The term “State” means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(11) STATE-LICENSED LOAN ORIGINATOR.—The term “State-licensed loan originator” means any individual who—

(A) is a loan originator;

(B) is not an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(C) is licensed by a State or by the Secretary under section 1508 and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(12) UNIQUE IDENTIFIER.—

(A) IN GENERAL.—The term “unique identifier” means a number or other identifier that—

- (i) permanently identifies a loan originator;
- (ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and
- (iii) shall not be used for purposes other than those set forth under this title.

(B) RESPONSIBILITY OF STATES.—To the greatest extent possible and to accomplish the purpose of this title, States shall use unique identifiers in lieu of social security numbers.

SEC. 1504. LICENSE OR REGISTRATION REQUIRED.

(a) IN GENERAL.—Subject to the existence of a licensing or registration regime, as the case may be, an individual may not engage in the business of a loan originator without first—

- (1) obtaining, and maintaining annually—
 - (A) a registration as a registered loan originator; or
 - (B) a license and registration as a State licensed loan originator; and
- (2) obtaining a unique identifier.

(b) LOAN PROCESSORS AND UNDERWRITERS.—

(1) SUPERVISED LOAN PROCESSORS AND UNDERWRITERS.—A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform any of the activities of a loan originator shall not be required to be a State-licensed loan originator.

(2) INDEPENDENT CONTRACTORS.—An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such independent contractor is a State-licensed loan originator.

SEC. 1505. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE.

(a) BACKGROUND CHECKS.—In connection with an application to any State for licensing and registration as a State-licensed loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information

concerning the applicant's identity, including—

(1) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(2) personal history and experience, including authorization for the System to obtain—

(A) an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(B) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) ISSUANCE OF LICENSE.—The minimum standards for licensing and registration as a State-licensed loan originator shall include the following:

(1) The applicant has never had a loan originator license revoked in any governmental jurisdiction.

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court—

(A) during the 7-year period preceding the date of the application for licensing and registration; or

(B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of this title.

(4) The applicant has completed the pre-licensing education requirement described in subsection (c).

(5) The applicant has passed a written test that meets the test requirement described in subsection (d).

(6) The applicant has met either a net worth or surety bond requirement, or paid into a State fund, as required by the State pursuant to section 1508(d)(6).

(c) PRE-LICENSING EDUCATION OF LOAN ORIGINATORS.—

(1) MINIMUM EDUCATIONAL REQUIREMENTS.—In order to meet the pre-licensing education requirement referred to in subsection (b)(4), a person shall complete at least 20 hours of education approved in accordance with paragraph (2), which shall include at least—

(A) 3 hours of Federal law and regulations;

(B) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) APPROVED EDUCATIONAL COURSES.—For purposes of paragraph (1), pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(3) LIMITATION AND STANDARDS.—

(A) LIMITATION.—To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer pre-licensure educational courses for loan originators.

(B) STANDARDS.—In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.

(d) TESTING OF LOAN ORIGINATORS.—

(1) IN GENERAL.—In order to meet the written test requirement referred to in subsection (b)(5), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by an approved test provider.

(2) QUALIFIED TEST.—A written test shall not be treated as a qualified written test for purposes of paragraph (1) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including—

(A) ethics;

(B) Federal law and regulation pertaining to mortgage origination;

(C) State law and regulation pertaining to mortgage origination;

(D) Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) MINIMUM COMPETENCE.—

(A) PASSING SCORE.—An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(B) INITIAL RETESTS.—An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(C) SUBSEQUENT RETESTS.—After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.

(D) RETEST AFTER LAPSE OF LICENSE.—A State-licensed loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered loan originator.

(e) MORTGAGE CALL REPORTS.—Each mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

SEC. 1506. STANDARDS FOR STATE LICENSE RENEWAL.

(a) **IN GENERAL.**—The minimum standards for license renewal for State-licensed loan originators shall include the following:

- (1) The loan originator continues to meet the minimum standards for license issuance.
- (2) The loan originator has satisfied the annual continuing education requirements described in subsection (b).

(b) **CONTINUING EDUCATION FOR STATE-LICENSED LOAN ORIGINATORS.**—

(1) **IN GENERAL.**—In order to meet the annual continuing education requirements referred to in subsection (a)(2), a State-licensed loan originator shall complete at least 8 hours of education approved in accordance with paragraph (2), which shall include at least—

- (A) 3 hours of Federal law and regulations;
- (B) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) **APPROVED EDUCATIONAL COURSES.**—For purposes of paragraph (1), continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(3) **CALCULATION OF CONTINUING EDUCATION CREDITS.**—A State-licensed loan originator—

- (A) may only receive credit for a continuing education course in the year in which the course is taken; and
- (B) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) **INSTRUCTOR CREDIT.**—A State-licensed loan originator who is approved as an instructor of an approved continuing education course may receive credit for the originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(5) **LIMITATION AND STANDARDS.**—

(A) **LIMITATION.**—To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer any continuing education courses for loan originators.

(B) **STANDARDS.**—In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.

SEC. 1507. SYSTEM OF REGISTRATION ADMINISTRATION BY FEDERAL AGENCIES.

(a) DEVELOPMENT.—

(1) IN GENERAL.—The Federal banking agencies shall jointly, through the Federal Financial Institutions Examination Council, and together with the Farm Credit Administration, develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employee of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of enactment of this title.

(2) REGISTRATION REQUIREMENTS.—In connection with the registration of any loan originator under this subsection, the appropriate Federal banking agency and the Farm Credit Administration shall, at a minimum, furnish or cause to be furnished to the Nationwide Mortgage Licensing System and Registry information concerning the employees' identity, including—

(A) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(B) personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) COORDINATION.—

(1) UNIQUE IDENTIFIER.—The Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each registered loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators.

(2) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY DEVELOPMENT.—To facilitate the transfer of information required by subsection (a)(2), the Nationwide Mortgage Licensing System and Registry shall coordinate with the Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration concerning the development and operation, by such System and Registry, of the registration functionality and data requirements for loan originators.

(c) CONSIDERATION OF FACTORS AND PROCEDURES.—In establishing the registration procedures under subsection (a) and the protocols for assigning a unique identifier to a registered loan originator, the Federal banking agencies shall make such de minimis exceptions as may be appropriate to paragraphs (1)(A) and (2) of section 1504(a), shall make reasonable efforts to utilize existing information to minimize the burden of

registering loan originators, and shall consider methods for automating the process to the greatest extent practicable consistent with the purposes of this title.

**SEC. 1508. SECRETARY OF HOUSING AND URBAN DEVELOPMENT
BACKUP AUTHORITY TO ESTABLISH A LOAN ORIGINATOR LICENSING
SYSTEM.**

(a) **BACKUP LICENSING SYSTEM.**—If, by the end of the 1-year period, or the 2-year period in the case of a State whose legislature meets only biennially, beginning on the date of the enactment of this title or at any time thereafter, the Secretary determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the requirements of sections 1505 and 1506 and subsection (d) of this section, or does not participate in the Nationwide Mortgage Licensing System and Registry, the Secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the Secretary of loan originators operating in such State as State-licensed loan originators.

(b) **LICENSING AND REGISTRATION REQUIREMENTS.**—The system established by the Secretary under subsection (a) for any State shall meet the requirements of sections 1505 and 1506 for State-licensed loan originators.

(c) **UNIQUE IDENTIFIER.**—The Secretary shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each loan originator licensed by the Secretary as a State-licensed loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

(d) **STATE LICENSING LAW REQUIREMENTS.**—For purposes of this section, the law in effect in a State meets the requirements of this subsection if the Secretary determines the law satisfies the following minimum requirements:

- (1) A State loan originator supervisory authority is maintained to provide effective supervision and enforcement of such law, including the suspension, termination, or nonrenewal of a license for a violation of State or Federal law.
- (2) The State loan originator supervisory authority ensures that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry.
- (3) The State loan originator supervisory authority is required to regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.
- (4) The State loan originator supervisory authority has a process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.

(5) The State loan originator supervisory authority has established a mechanism to assess civil money penalties for individuals acting as mortgage originators in their State without a valid license or registration.

(6) The State loan originator supervisory authority has established minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, or has established a recovery fund paid into by the loan originators.

(e) TEMPORARY EXTENSION OF PERIOD.—The Secretary may extend, by not more than 24 months, the 1-year or 2-year period, as the case may be, referred to in subsection (a) for the licensing of loan originators in any State under a State licensing law that meets the requirements of sections 1505 and 1506 and subsection (d) if the Secretary determines that such State is making a good faith effort to establish a State licensing law that meets such requirements, license mortgage originators under such law, and register such originators with the Nationwide Mortgage Licensing System and Registry.

SEC. 1509. BACKUP AUTHORITY TO ESTABLISH A NATIONWIDE MORTGAGE LICENSING AND REGISTRY SYSTEM.

If at any time the Secretary determines that the Nationwide Mortgage Licensing System and Registry is failing to meet the requirements and purposes of this title for a comprehensive licensing, supervisory, and tracking system for loan originators, the Secretary shall establish and maintain such a system to carry out the purposes of this title and the effective registration and regulation of loan originators.

SEC. 1510. FEES.

The Federal banking agencies, the Farm Credit Administration, the Secretary, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.

SEC. 1511. BACKGROUND CHECKS OF LOAN ORIGINATORS.

(a) ACCESS TO RECORDS.—Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide access to all criminal history information to the appropriate State officials responsible for regulating State-licensed loan originators to the extent criminal history background checks are required under the laws of the State for the licensing of such loan originators.

(b) AGENT.—For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (a), the Conference of State Bank Supervisors or a wholly owned subsidiary may be used as a channeling agent of the States for requesting and distributing

information between the Department of Justice and the appropriate State agencies.

SEC. 1512. CONFIDENTIALITY OF INFORMATION.

(a) **SYSTEM CONFIDENTIALITY.**—Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 1509, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) **NONAPPLICABILITY OF CERTAIN REQUIREMENTS.**—Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—

- (1) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or
- (2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or the Secretary with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(c) **COORDINATION WITH OTHER LAW.**—Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of such provision to the extent State law provides less confidentiality or a weaker privilege.

(d) **PUBLIC ACCESS TO INFORMATION.**—This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in Nationwide Mortgage Licensing System and Registry for access by the public.

SEC. 1513. LIABILITY PROVISIONS.

The Secretary, any State official or agency, any Federal banking agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 1509, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or

employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

SEC. 1514. ENFORCEMENT UNDER HUD BACKUP LICENSING SYSTEM.

(a) **SUMMONS AUTHORITY.**—The Secretary may—

- (1) examine any books, papers, records, or other data of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508; and
- (2) summon any loan originator referred to in paragraph (1) or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the Secretary or any delegate of the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of this title.

(b) **EXAMINATION AUTHORITY.**—

- (1) **IN GENERAL.**—If the Secretary establishes a licensing system under section 1508 for any State, the Secretary shall appoint examiners for the purposes of administering such section.
- (2) **POWER TO EXAMINE.**—Any examiner appointed under paragraph (1) shall have power, on behalf of the Secretary, to make any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508 whenever the Secretary determines an examination of any loan originator is necessary to determine the compliance by the originator with this title.
- (3) **REPORT OF EXAMINATION.**—Each examiner appointed under paragraph (1) shall make a full and detailed report of examination of any loan originator examined to the Secretary.
- (4) **ADMINISTRATION OF OATHS AND AFFIRMATIONS; EVIDENCE.**—In connection with examinations of loan originators operating in any State which is subject to a licensing system established by the Secretary under section 1508, or with other types of investigations to determine compliance with applicable law and regulations, the Secretary and examiners appointed by the Secretary may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.
- (5) **ASSESSMENTS.**—The cost of conducting any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508 shall be assessed by the Secretary against the loan originator to meet the Secretary's expenses in carrying out such examination.

(c) CEASE AND DESIST PROCEEDING.—

(1) AUTHORITY OF SECRETARY.—If the Secretary finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this title, or any regulation thereunder, with respect to a State which is subject to a licensing system established by the Secretary under section 1508, the Secretary may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as the Secretary may specify in such order. Any such order may, as the Secretary deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Secretary may specify, with such provision or regulation with respect to any loan originator.

(2) HEARING.—The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Secretary with the consent of any respondent so served.

(3) TEMPORARY ORDER.—Whenever the Secretary determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest prior to the completion of the proceedings, the Secretary may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as the Secretary deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Secretary determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Secretary or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(4) REVIEW OF TEMPORARY ORDERS.—

(A) REVIEW BY SECRETARY.—At any time after the respondent has been served with a temporary cease and desist order pursuant to paragraph (3), the respondent may apply to the Secretary to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease and desist order entered without a prior hearing before the Secretary, the

respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Secretary shall hold a hearing and render a decision on such application at the earliest possible time.

(B) JUDICIAL REVIEW.—Within—

(i) 10 days after the date the respondent was served with a temporary cease and desist order entered with a prior hearing before the Secretary; or

(ii) 10 days after the Secretary renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease and desist order entered without a prior hearing before the Secretary, the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease and desist order entered without a prior hearing before the Secretary may not apply to the court except after hearing and decision by the Secretary on the respondent's application under subparagraph (A).

(C) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under subparagraph (B) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

(5) AUTHORITY OF THE SECRETARY TO PROHIBIT PERSONS FROM SERVING AS LOAN ORIGINATORS.—In any cease and desist proceeding under paragraph (1), the Secretary may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as the Secretary shall determine, any person who has violated this title or regulations thereunder, from acting as a loan originator if the conduct of that person demonstrates unfitness to serve as a loan originator.

(d) AUTHORITY OF THE SECRETARY TO ASSESS MONEY PENALTIES.—

(1) IN GENERAL.—The Secretary may impose a civil penalty on a loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508, if the Secretary finds, on the record after notice and opportunity for hearing, that such loan originator has violated or failed to comply with any requirement of this title or any regulation prescribed by the Secretary under this title or order issued under subsection (c).

(2) MAXIMUM AMOUNT OF PENALTY.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$25,000.

SEC. 1515. STATE EXAMINATION AUTHORITY.

In addition to any authority allowed under State law a State licensing agency shall have the authority to conduct investigations and examinations as follows:

- (1) For the purposes of investigating violations or complaints arising under this title, or for the purposes of examination, the State licensing agency may review, investigate, or examine any loan originator licensed or required to be licensed under this title, as often as necessary in order to carry out the purposes of this title.
- (2) Each such loan originator shall make available upon request to the State licensing agency the books and records relating to the operations of such originator. The State licensing agency may have access to such books and records and interview the officers, principals, loan originators, employees, independent contractors, agents, and customers of the licensee concerning their business.
- (3) The authority of this section shall remain in effect, whether such a loan originator acts or claims to act under any licensing or registration law of such State, or claims to act without such authority.
- (4) No person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

SEC. 1516. REPORTS AND RECOMMENDATIONS TO CONGRESS.

- (a) **ANNUAL REPORTS.**—Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall submit a report to Congress on the effectiveness of the provisions of this title, including legislative recommendations, if any, for strengthening consumer protections, enhancing examination standards, streamlining communication between all stakeholders involved in residential mortgage loan origination and processing, and establishing performance based bonding requirements for mortgage originators or institutions that employ such brokers.
- (b) **LEGISLATIVE RECOMMENDATIONS.**—Not later than 6 months after the date of enactment of this title, the Secretary shall make recommendations to Congress on legislative reforms to the Real Estate Settlement Procedures Act of 1974, that the Secretary deems appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs.

SEC. 1517. STUDY AND REPORTS ON DEFAULTS AND FORECLOSURES.

- (a) **STUDY REQUIRED.**—The Secretary shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as is available.
- (b) **PRELIMINARY REPORT TO CONGRESS.**—Not later than 6 months after the date of enactment of this title, the Secretary shall submit to Congress a preliminary report regarding the study required by this section.
- (c) **FINAL REPORT TO CONGRESS.**—Not later than 12 months after the date of enactment of

this title, the Secretary shall submit to Congress a final report regarding the results of the study required by this section, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to provide targeted assistance to populations with the highest risk of potential default or foreclosure.