

SB

279

<target><bill>SB 279</bill><subject>SB
279</subject><comm>HFIN26</comm></target>

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

Senate District E
Fairbanks and Fort Wainwright



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Sponsor Statement for SB 279: Mortgage Lending

Senate Bill 279 "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 279, 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"), 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 (1) implement mortgage laws which conform to its requirements by July 30, 2009, and (2) join and use a national database called the National Mortgage Licensing System and Registry (Registry) to license mortgage loan originators. States may implement more comprehensive mortgage lending laws than are provided under the federal SAFE Act, which provides minimum standards and requirements.

Alaska was able to join and begin licensing through the Registry on August 1, 2009, as the result of the passage of House Bill 221 last legislative session, which authorized participation in the Registry, enabling the state to comply with that part of the SAFE Act.

Under the SAFE Act, a state which is unable to meet the July 30, 2009 compliance deadline and whose legislature meets annually, may apply for a one-year extension to the U.S. Department of Housing and Urban Development (HUD), the federal agency tasked with compliance oversight. Alaska requested an extension on August 25, 2009.

If a state does not comply with the federal law by the deadline, then HUD is required under the SAFE Act to license loan originators in the state. While a state may maintain authority under its existing law, the authority will be subordinate to HUD. This structure would increase the regulatory burden and cost on the industry. HUD is not required to coordinate with the states.

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A few examples of revisions and requirements under the SAFE Act include (a) changing our current license renewal from a biennial to an annual renewal and (b) requiring 20 hours of pre-licensing education.

For consumers and state regulators, one of the primary advantages to joining the Registry is the sharing of information about mortgage lenders and loan originators among states, as well as the ability to conduct joint exams with other states for out-of-state mortgage lenders doing business in Alaska, including those which operate via the Internet. The Registry also increases and centralizes information available to state regulators, the industry and consumer about the mortgage lending companies and professionals. The use of a national licensing database is also beneficial to the mortgage lending industry, making it easier to track mortgage loan originators and creating a uniform, electronic application process for licensing.

I respectfully request your consideration of this bill and look forward to hearing your questions and concerns.

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SECTIONAL ANALYSIS HCS for CS for Senate Bill 279(L&C)

“An Act relating to regulation of residential 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.”

Section 1

Adds legislative intent in uncodified law to clarify that the repeal of 45.50.471(b)(52) does not prevent liability for prohibited conduct under 45.50.471-45.50.561.

Section 2

Amends the definition of financial institution in Title 06 to delete reference to “small mortgage lender,” because the new federal requirements of Public Law 110-289, Title V, Secure and Fair Enforcement for Mortgage Licensing Act (SAFE) do not allow states to offer a small mortgage lender exception.

Sections 3-4

Requires the state to use the National Mortgage Licensing System and Registry (“registry”) to license mortgage lenders, mortgage brokers, and mortgage loan originators and to issue them a unique identifier per SAFE. Doing business in the state includes doing business in the state from a location outside the state or via the Internet. Outlines loan processor and underwriter licensing requirements per Model State Language approved by HUD. If they are independent contractors, they must be licensed as a mortgage loan originator. If they are not independent contractors, and if they do not advertise or represent themselves to the public as mortgage loan originators, then they do not need to be licensed. Also, adds the internet to the list of advertising or communication requiring licensing identification.

Section 5

Sets forth the allowed exemptions to licensing under this chapter per SAFE.

Section 6

Grants authority for the state to participate in the registry, pay the required fees, require industry licensing through the registry and establish a process for licensees to challenge information entered into the registry, as required by SAFE.

Section 7

Describes license application requirements, which include: be on a form prescribed by the department (defined as DCCED) and the registry; contain complete information; include applicant and control person fingerprints, and contain financial background and experience. AS 06.60.020 and .025 are combined into this new section and .025 is repealed. Regulations will include any other registry application process requirements not included in statute and required by SAFE.

Section 8

Reference to "originator" is changed to "mortgage loan originator. No substantive change.

Section 9

Per the SAFE act, requires applicant for mortgage license to furnish to the registry or the department, information regarding applicant's identity, including fingerprints, personal history and experience, credit report, and information related to administrative, civil or criminal findings. It reduces points of contact and allows department to use the registry as a channeling agent for requesting and distributing information for any source directed by the department.

Section 10

Requires payment of application fee and license fee, and changes license renewal from biennial to annual renewal based on the calendar year, per SAFE.

Section 11

Clarifies that state mortgage license fees are in addition to registry fees and business license fees assessed under AS 43.70.

Section 12

Permits fees under this chapter to be set in regulation.

Section 13

Modifies prelicensing and relicensing education requirements for mortgage loan originators per SAFE requirements.

Section 14

Sets forth SAFE requirements for pre-licensing test. The test measures an applicant's knowledge and comprehension, including ethics, and federal and state law relating to loan origination, fraud prevention, consumer protection, nontraditional mortgages and fair lending. The minimum passing score is 75 % correct answers. Mortgage loan originators may retake the test 3 consecutive times after waiting 30 days after the proceeding test. After failing 3 consecutive tests, an individual may not retest for at least 6 months. A mortgage loan originator who does not maintain a valid license for 5 years, must retake the test. This period without a license does not take into account time during which individual is a registered mortgage loan originator. Department is authorized to access a fee for each test administration.

Section 15

Authorizes the department to adopt regulations to cover bonding requirements.

Section 16

Requires that bonds be continuous and last until three years after a license is terminated or revoked. This brings the bonding requirements into line with the requirements for other licensed industries (*i.e.*, money service businesses and payday lenders, which are also licensed by the department).

Section 17

Deletes a reference to AS 06.60.025 (Application for originator license), which is being repealed and its subject matter added to SAFE-compliant AS 06.60.020 (Application for license).

Section 18

Sets forth the determinations the department must make before granting a mortgage license under SAFE. Applicants must have met the requirements of this chapter. General financial fitness and character of the applicants, directors, officers, members, owners, and other principals must indicate that the business will operate efficiently, fairly, in the public interest and under the law. Replaces the term "principals" with "control person" per the Model State Language. Control person is subsequently defined in Section 81 (Definitions).

Section 19

In order to be responsive to the industry and not halt the course of commerce, this amendment is added because of the length of time it sometimes takes to process fingerprint cards: sometimes up to 4 months in the past. The change authorizes the department to issue a provisional license, the duration of which may last no more than 90 days, if applicant meets all licensure requirements, with the exception of receipt of a background check, which is delayed, through no fault of the applicant, more than 60 days after the date the fingerprints were submitted by the applicant.

Section 20

Per SAFE requirements, changes the duration of the license from 2 years to one year, renewing each December 31st.

Section 21

Requires a licensee to renew license in a form and manner required by the department and the registry and to submit certain information. Changes the renewal fee from biennial to annual fee to comply with SAFE. Renewals are submitted through the registry, not the department. Authorizes the department to adopt procedures and deadlines for license renewal and the assessment of a penalty for late filing, consistent with registry requirements.

Section 22

Per SAFE, adds a new section, which states the minimum standards for license renewal, which include: meeting license issuance standards, satisfying continuing education requirements, paying fees, and complying with requirements under the chapter. Allows the department to establish reinstatement process for expired licenses via regulation.

Section 23

Adds clarifying language. Omits reference to the return of a paper license, in contemplation of going paperless, since all up-to-date records are fully accessible by the public on the registry website.

Section 24

Reference to "originator" is changed to "mortgage loan originator."

Section 25

Clarifies process for a licensee to request the reactivation of a license.

Section 26

Changes three license inactivation requirements, which include: (1) paying annual license fee per SAFE, (2) maintaining the bond required by AS 06.60.045, instead of letting the bond expire, and (3) filing the annual report required by AS 06.60.100. During inactive status, a licensee must inform the department of any changes in name, address, location or business operations or control person.

Section 27

Modifies the requirements for reactivation of an inactive license, taking into account annual license renewals under SAFE and eliminating reference to 24 months, since inactive licenses expire within 12 months, if not reactivated and renewed. If reactivated, a license expires on December 31st of the year issued.

Section 28

Provides that the date licensees must file an annual report will be established by regulation, as well as the report's form and content.

Section 29

Requires licensee to submit reports to the registry, as required by the registry.

Section 30

Adds a new section to deal with branch office applications through the registry, and authorizing the department to adopt regulations regarding procedures and fees for the submission of a branch office application consistent with the requirements of the registry.

Section 31

Adds the authority for the department to establish by regulation, the fees and other requirements for requesting approval of a change in control of a mortgage licensee, consistent with the requirements of the registry.

Section 32

Technical change to correct reference to a statute's subparagraph lettering, which is changed.

Sections 33-35

Reference to "originator" is changed to "mortgage loan originator."

Section 36

Establishes continuing education requirements for mortgage loan originators in accordance with SAFE. Changes current law (which requires 24 hours of education for each biennial license period) to at least 8 hours annually, and specifies 3 hours of federal law and regulation, 2 hours of ethics (including instruction on fraud prevention, consumer protection, and fair lending issues), and 2 hours of non-traditional mortgage product marketplace (*i.e.*, reverse mortgages). Continuing education courses must be approved by the department. A mortgage loan originator may only receive credit in the year for which the course was taken and may not retake the same course in the same or successive years to meet the annual continuing education requirement. A mortgage loan originator who is an approved instructor may receive credit at a rate of 2 hours for every hour taught. Successful completion of a continuing education course approved for another state by the registry shall be accepted as credit in Alaska. A mortgage loan originator who becomes unlicensed must complete the continuing education requirements for the last year in which they held a valid license. The department may establish by regulation procedures for making up deficiencies in continuing education.

Section 37

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE). This section authorizes the department to deny, suspend, revoke, condition, or decline to renew a license, or to take other disciplinary action, and sets forth the conditions under which disciplinary action may be applied.

Section 38

Changes "originator" to "mortgage loan originator." States the department may suspend or revoke a license when an award is made from the surety fund. Adds departmental authority to "decline to renew" a license as well.

Section 39

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE).

Section 40

Clarifies that reinstatement of a license may occur when that license is under suspension (not when it has been revoked). Deletes reference to AS 06.60.017, the small mortgage lender statute (no small lender exemption allowed under SAFE).

Section 41

Clarifies and better defines the department's investigation and examination authority. Eliminates the 36 month suggested examination schedule and provides that the department may conduct reviews, investigations, or examinations as often as necessary to carry out the purposes of the chapter.

Sections 42-43

References to "originator" are changed to "mortgage loan originator."

Section 44

Adds a new section as required by SAFE, which mandates the department making regular reports of violations, as well as enforcement actions to the registry, subject to provisions established in regulations regarding confidentiality. Reportable information will include employment history and publicly adjudicated disciplinary and enforcement actions. Privileged and otherwise confidential information will be protected.

Section 45

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE).

Section 46

Adds a new section which requires everyone operating as a mortgage loan originator, mortgage broker or mortgage lender to clearly display the unique identifier, which has been assigned by the registry, on all residential mortgage loan application forms, solicitations, and advertisements, including business cards or websites, and any other documents as established by regulation or order of the department. This language comes from the Model State Language.

Section 47

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE). Corrects the over-inclusiveness of AS 06.60.330(6) by limiting applicability from "any other federal law or regulation" to "any other federal statute the purpose of which is to regulate residential mortgage lending" and the regulations adopted under the statutes identified in AS 06.60.330.

Section 48

Prohibited activities from current law (subsections 1-2, and 16-25) are expanded to include additional prohibited activities for consumer protection from the Model State Language (subsections 3-15, and 26). These provisions are intended to protect consumers.

Section 49

Adds a new subsection to define "escrow account."

Section 50

Adds clarifying language and deletes reference to small mortgage lender (no small lender exemption allowed under SAFE) and the statutes which apply to small mortgage lenders.

Section 51

More clearly outlines the provisions for cease and desist proceedings per SAFE.

Section 52

Increases rights of licensees by adding a new section, which provides for the right of review of temporary cease and desist orders.

Sections 53-54

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE).

Section 55-56

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE).

Section 57

Reference to "originator" is changed to "mortgage loan originator." Describes the surety fund purpose to be to pay fund claims against mortgage loan originator licensees.

Section 58

Reference to "originator" is changed to "mortgage loan originator." Adds clarifying language to describe the composition of the surety fund, which includes: (1) appropriations of payments made by mortgage loan originator licensees, (2) filing fees for fund claims, (3) income earned on the investment of money in the fund, and (4) subrogation money deposited in the fund by the department under AS 06.60.740.

Section 59

Reference to "originator" is changed to "mortgage loan originator." Authorizes the department to establish the fund fee, which is paid by mortgage loan originator licensees, to be set in regulations.

Section 60

Reference to "originator" is changed to "mortgage loan originator." The amount of the fund fee (\$150) is omitted and will be set in regulations.

Sections 61-63

Reference to "originator" is changed to "mortgage loan originator" and clarifying language added regarding the penalty of unsworn falsification.

Section 64

Extends the time from 7 days to 30 days in which an originator may elect to defend a fund claim in small claims court.

Sections 65-72

Reference to "originator" is changed to "mortgage loan originator."

Section 73

Clarifies language with regards to the surety fund, by adding the word "limit" to denote the \$50,000 liability limit for fund claims against one originator licensee. Reference to "originator" is changed to "mortgage loan originator."

Section 74

Adds a new section, which provides that the rights granted to a claimant under the surety fund statutes do not limit any other cause of action the claimant may have against a mortgage loan originator.

Section 75-76

Reference to "originator" is changed to "mortgage loan originator."

Section 77

Adds a new subsection (e), which calls for the \$10 program administration fees authorized to be collected under this section to be separately accounted for, and provides that the fees may be appropriated by the legislature to DCCED for the operation of the chapter. Under a later repealer section, the requirement that the Department of Natural Resources (DNR) collect the program administration fee is repealed. The process for the collection of the fee will be implemented through regulation. DNR determined that it would cost more for it to collect the fee than would actually be collected in fees. Therefore, a different procedure will be established via regulation, involving collection of the fee by title companies at closing, and direct submittal to DCCED, bypassing DNR entirely.

Section 78

Per SAFE, the department is authorized to publish disciplinary action taken against a licensee under this chapter, via the Internet, the registry or other publication.

Section 79

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE). Also adds that this chapter applies to Internet activities from within or outside the state.

Section 80

Adds clarifying language to the effect that notwithstanding the provisions of AS 06.01.030(f), the Administrative Code applies to departmental disciplinary actions and hearings and to the issuance of disciplinary orders.

Section 81

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE).

Section 82

Repeals current definitions section AS 06.60.900 and reenacts it to incorporate the following substantive changes per the SAFE Act and as follows:

- Omits definition of "agent."
- Omits definition of "broker."
- Adds "consumer reporting agency" per Fair Credit Reporting Act.
- Redefines "control" and "control person" per the registry's MU1 application form. Changes to 10% the amount of voting shares in a corporation or 10% of the capital of an LLC or partnership, which determines when the person is considered to have control. "Control person" is defined according to the meaning provided in the registry's MU1 application form. The 10% is presumptuous of control; however, this presumption can be overcome by a person having the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.
- Adds "depository institutions" which, per SAFE, has the meaning given in the Federal Deposit Insurance Act and includes a credit union.
- Adds "dwelling" which, per SAFE, means a residential structure or mobile home that contains one to four family housing units, or the individual units of condominiums or cooperatives.
- Omits definition of "escrow account."
- Adds "federal banking agencies" which, per SAFE, means the Board of Governors of the Federal Reserve System, the comptroller of the currency, the director of the OTS, the NCUA and the FDIC.
- Adds "individual" which means natural person.
- Changes the meaning of "knowingly" to that meaning given in AS 11.81.900(a)
- Adds "licensed mortgage loan originator"
- Adds "loan processor or underwriter"
- Omits "mortgage lender license"
- Omits "mortgage lender licensee"
- Changes the definition of "mortgage loan" to use SAFE language. The main difference is the addition of mobile homes and encompasses non-owner-occupied one to four family units as well as owner-occupied one to four family units. (See definition of "dwelling.")
- Adds "mortgage loan originator" per SAFE, and includes in the definition, the meaning of "real estate brokerage activity" per SAFE.
- Adds "mortgage loan originator license."

- Adds "Nationwide Mortgage Licensing System and Registry" per SAFE.
- Adds "nontraditional mortgage product" which, per SAFE, means any mortgage product other than a 30-year fixed rate mortgage.
- Adds to the meaning of "operate" to include "hold out" which means to represent to the public, through advertising or other means of communication or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform an activity for which a license is required under this chapter.
- Adds "operate in the state" which includes Internet businesses.
- Omits "originator," "originator license," and "originator licensee," having replaced these definition with the those involving "mortgage loan originator."
- Adds "registered mortgage loan originator" which, per SAFE, means those who work as

originators for a depository institution and its subsidiaries or an institution regulated by the Farm Credit Administration. These originators must be registered through the registry and maintain a unique identifier.

- Adds “registry” per SAFE.
- Adds “residential mortgage loan.”
- Defines “residential property” to mean, per SAFE, real property located in the state on which a dwelling is constructed or is intended to be constructed.
- Omits “small mortgage lender,” because no small lender exemption is allowed under SAFE.
- Adds “unique identifier” which, per SAFE, means a number or other identifier assigned to a licensee by protocols established by the registry.

Section 83

Amends the short title to the Alaska Secure and Fair Enforcement for Mortgage Licensing Act of 2010.

Section 84

Reference to “originator” is changed to “mortgage loan originator.”

Section 85

Amends AS 12.62.400 (National criminal history record checks for employment, licensing and other noncriminal justice purposes) is amended by adding a new subsection which permits the submittal of fingerprints to the registry, per SAFE requirements. Under the statute as it currently stands, these fingerprint cards must be submitted to the Department of Public Safety

Section 86

This is the repealer section. It repeals the following statutes as follow:

06.60.017 — (Small mortgage lenders and originators) This exemption is not permitted by SAFE.

06.60.025 — (Application for originator license) Application provisions for obtaining a mortgage loan originator license are added to AS 06.60.020 (Application for license).

06.60.065 — (Determinations for originator licensing) Determinations to be made by the department before issuing a mortgage loan originator, mortgage broker or mortgage lender license are all included in AS 06.60.60 (Determinations before licensing).

06.60.070 — (Form and contents of license) The department will no longer supply paper licenses. More complete and up-to-date information is available to the public on the registry website.

06.60.075 — (License availability) Eliminated, in contemplation of paperless license and more complete and up-to-date information is available to the public on the registry website.

06.60.090(i) — (Inactive license) Again, anticipates paperless license and obtaining license status via the registry website.

06.60.097(b) — (Surrender of license) Paperless license; therefore no surrender, merely license status on the registry website.

06.60.105 — (Biennial license fee) SAFE requires annual license fee, which is covered in this Bill Draft Section 20 (AS 06.60.085 – Renewal of license) provisions and Section

11 (AS 06.60.035 – Fees and expenses) which permits fees under this chapter to be set in regulation.

06.60.145 — (Disqualified persons) Inapplicable.

06.60.150 — (Posting of license) Eliminated, in contemplation of paperless license and more complete and up-to-date information is available to the public on the registry website.

06.60.440 — (Definition) "small mortgage lender" definition is eliminated because SAFE Act does not allow this exemption.

06.60.540 — (Approval required) Department is not authorized to and will not use surety fund for these purposes.

06.60.810 — (Payment and use of fees) Repeals the requirements that DNR collect the program administrative fee. Instead, this \$10 fee collection will be established via regulation.

06.60.870 — Temporary section passed last legislative session which authorized participation in the Registry; authorization is included elsewhere in statutes.

45.50.471(b)(52) – Automatic referral to the Consumer Protection Act. This repeal is the subject of the legislative intent language in section 1 of the bill.

Section 87

Transitional section provides that

- a person holding a valid license issued under Chapter 06.60 on or before July 1, 2010, may continue to operate under that license until license expires, is revoked, or is suspended except for a mortgage license application amendment submitted on or after July 1, 2010 requesting approval of a change of a control person and this Act, including its provisions on expiration, renewal, prohibitions, revocation, suspension, and enforcement, apply to the license and to the person's operation under the license;
- a person who is not licensed under Chapter 06.60 before July 1, 2010 and files an application for licensing under this Act after July 1, 2010, shall comply with the requirements of this Act to receive a license under this Act; and

Section 88

Transitional section provides for temporary fees and bond amount during the period from July 1, 2010 and effective date of new regulations. The intent is to have regulations in place by July 1st, but if delayed, fees during this period will essentially remain the same as under current statutes.

Section 89

Authorizes the department adopt regulations necessary to implement this Act. They will take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2010.

Section 90

Section 88 of this Act (authorizing the department to adopt regulations) takes effect immediately under AS 01.10.070(c).

Section 91

Except as provided in sec. 89 of this Act, this Act takes effect July 1, 2010.

Adopted 4/15/10

26-LS1295\C.1
Bannister
4/15/10

AMENDMENT #1

By Stoltze
by Request

OFFERED IN THE HOUSE

TO: HCS CSSB 279(L&C)

1 Page 1, line 8:

2 Delete "REPEAL" ✓

3 Insert "AMENDMENT" ✓

4

5 Page 1, line 9:

6 Delete "repeal" ✓

7 Insert "amendment" ✓

8

9 Page 1, line 10, through page 2, line 4: ✓

10 Delete all material.

11 Insert "the amendment not affect the right of a person to bring an action under
12 AS 45.50.471 - 45.50.561 for a violation of AS 06.60.340, as amended by sec. 48 of this Act,
13 for conduct that is also described under another provision of AS 06.60.320 - 06.60.380."
14

15 Page 23, lines 24 - 25:

16 Delete "In addition to activities prohibited elsewhere in this chapter or by other law, a" ✓

17 Insert "A" ✓

18

19 Page 42, following line 1:

20 Insert a new bill section to read:

21 "** Sec. 86. AS 45.50.471(b)(52) is amended to read:

22 (52) violating AS 06.60.340 [AS 06.60.010 - 06.60.380] (mortgage
23 lending regulation);"

1

2 Renumber the following bill sections accordingly.

3

4 Page 42, lines 3 - 4:

5 Delete "06.60.870; and AS 45.50.471(b)(52)"

6 Insert "and 06.60.870"

7

8 Page 42, line 25:

9 Delete "sec. 89"

10 Insert "sec. 90"

11

12 Page 42, line 26:

13 Delete "sec. 89"

14 Insert "sec. 90"

15

16 Page 43, line 17:

17 Delete "Section 89"

18 Insert "Section 90"

19

20 Page 43, line 18:

21 Delete "sec. 90"

22 Insert "sec. 91"

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 279
(S) Publish Date: 3/4/10

Identifier (file name): SB279-CED-BSS-2-23-10 Dept. Affected: DCCED
Title: Regulation of Mortgage Lending RDU: Banking and Securities
Component: Banking and Securities
Sponsor: Senator Paskvan
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 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services	65.0		65.0	65.0	65.0	65.0	65.0	65.0
Travel	20.0		20.0	20.0	20.0	20.0	20.0	20.0
Contractual	43.0		13.0	6.0	6.0	6.0	6.0	6.0
Supplies	3.0		3.0	3.0	3.0	3.0	3.0	3.0
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	131.0		101.0	94.0	94.0	94.0	94.0	94.0
CAPITAL EXPENDITURES								
CHANGE IN REVENUES ()	384.0		438.0	438.0	438.0	438.0	438.0	438.0

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)	131.0		101.0	94.0	94.0	94.0	94.0	94.0
TOTAL	131.0	0.0	101.0	94.0	94.0	94.0	94.0	94.0

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time	1	0	1	1	1	1	1
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill will bring the State of Alaska's mortgage lending statutes into compliance with the minimum federal licensing standards that are required by the federal S.A.F.E Act.

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 Licensing System and Registry to license mortgage loan originators. This was achieved with the passage of House Bill 221 during the 2009 legislative session, and Alaska joined the Registry August 1, 2009. The second part of the federal S.A.F.E. Act requires that states implement minimum federal licensing standards, which is the purpose of this bill.

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

Phone 269-8140
Date/Time 2/22/10 10:30 AM
Date 2/23/2010

FISCAL NOTE #1

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. SB 279

ANALYSIS CONTINUATION

The personal services component includes the addition of one occupational licensing position. Currently, one staff member handles the processing of license application, changes and renewals for two programs: mortgage lending as well as money service businesses. This position will be hired in FY11 to perform primarily mortgage lending and Registry licensing, change notice processing, and renewal functions, as well as support for the examiners. Our currently employed occupational licensing position will focus on money service business licensing, renewals and examiner support, as well as back-up in mortgage lending at peak times, such as year end when all licenses renew. The contractual line includes \$3,000 in FY11 for costs associated with this new position as well as an ongoing \$3,000 in the supplies line.

The travel component reflects the department licensing numerous out-of-state mortgage lending companies due to the national registry, requiring travel to examinations. The department estimates these out-of-state exams will cost about \$20,000 per year, with travel to three exams per year, considering a 3 year exam schedule and reliance on other states for some portions of most out-of-state exams.

American Association of Residential Mortgage Regulators (AARMR) and the Conference of State Bank Supervisors (CSBS) oversee the national Registry. The CSBS membership fee is already included in the division's budget; however, the AARMR annual fee of \$750 is new and is included in the contractual component.

Additionally, the Registry only processes federal background checks, and a licensee pays for this federal background check fee directly to the Registry. State background checks (e.g., for mortgage company control persons) are paid up-front by the division. When the fee is collected from a licensee it goes into the general fund. We estimate the division's cost to be approximately \$5,250 per year for this state background check service and is included in the contractual component.

The contractual component also reflects \$30,000 in legal fees in FY11 associated with drafting the regulation package and an increase in our contract for legal hearing officer services in FY11. Other states already in compliance with the new federal laws have experienced increased legal and hearing fees associated with changes affecting the industry. The department expects an increase totaling \$14,000 for in FY11 and FY12 as the result of changes in current law.

Change in Revenue:

An increase in FY11 revenue is expected due to changes brought about expansion of the definition of "mortgage loan originator." This expansion includes licensing of loss mitigation specialists as mortgage loan originators, thereby affecting loan modification and servicing companies. Licensing these individuals will also increase the number of companies needing to be licensed.

Additionally, the S.A.F.E. Act limits exemptions, such that non-profits, mobile home dealerships and previously exempt subsidiaries of financial institutions must now be licensed. We estimate that all of these changes will increase FY11 revenue by \$384.0.

In FY12 and beyond, the revenue increase is primarily due to the S.A.F.E. Act requiring annual, rather than biennial renewals. To estimate this increase, we reduced the number of additional applicants resulting from change in law in FY11, determined a number that anticipates new applicants and non-renewing licensees in relative stasis, and estimated the change in revenue to be \$483.0 per year.

Explanation of Amendments in HCS for CSSB 279(L&C)

The Senate Finance Committee amended SB 279, based on comments received from the Conference of State Bank Supervisors ("CSBS")* after the bill passed out of the Senate Labor and Commerce Committee; and a few technical issues identified by the committee. The CSBS amendments were proposed to ensure compliance with the SAFE Act. The staff technical amendments generally provide clarification. Unless otherwise noted, page and line references below are to the location of the amendments in HCS for CSSB 279(L&C).

a. Approval authority for education courses

Under the SAFE Act, courses required for pre-licensing education and for continuing education have to be approved by the registry. Due to concern within the Department of Law (DOL) that the state's approval authority cannot be delegated, the bill provided for approval of the courses by the state, with the understanding that the state would rely on the registry's approval in making its decision to approve. CSBS felt this language conflicted with the registry's approval authority.

The conflict is resolved with the amendments to the satisfaction of both the DOL and CSBS. In those sections of the bill that previously referred to approval of courses by the state, the bill now cites the approval under the specific SAFE Act section that describes the registry's authority in this area. CSBS also pointed out that paragraph (e) of AS 06.60.038 (page 7 of SB 279) will be unnecessary under the SAFE Act and it has been deleted.

The changes that address these issues occur in AS 06.60.038 (pre-licensing education) (*see* section 13, page 7, lines 11 -21) and in AS 06.60.160 (continuing education) (*see* section 36, page 16, lines 7-15).

b. Approval authority for licensing test

The SAFE Act provides that the licensing test will be developed by SAFE and that the test will cover both federal and state law. CSBS felt that the separate approval by the state for the state component of the test conflicted with the SAFE Act. The amendments take out the separate references to the "national" and the "state" tests and just cite the section of the SAFE Act that describes the authority of the registry to develop the licensing test on both federal and state law.

This change is in AS 06.60.040 (testing of mortgage loan originators). *See* section 13, page 7, lines 22-25.

* A wholly-owned subsidiary of CSBS owns and operates the Nationwide Mortgage Licensing System and Registry ("registry").

c. Disqualifying felony convictions

The SAFE Act requires that an applicant for licensing as a mortgage loan originator who has been convicted of any felony in the seven years before the application is disqualified from licensing. If a felony conviction involves "an act of fraud or dishonesty, a breach of trust, or money laundering," then the applicant is disqualified not for seven years but for life. SB 279 included the limitation involving "fraud or dishonesty, a breach of trust, or money laundering" for felonies occurring within seven years of the application. This inconsistency with the SAFE Act is corrected by the amendment.

The change is in AS 06.60.060 (determinations before licensing). *See* section 18, page 10, line 1.

d. Definition of "residential mortgage loan"

The SAFE Act contains a definition of "residential mortgage loan" that is applicable to the states in their licensing of mortgage loan originators. SB 279 incorporated the elements of the SAFE definition in "mortgage loan," read in combination with the definition of "residential property." SB 279 also contained a separate definition of "residential mortgage loan" that incorporated the defined phrase "mortgage loan," but added "for residential real property." This arrangement could have created some confusion about whether "residential mortgage loan" and "mortgage loan," both of which are used in the bill, are intended to have the same meaning and whether that meaning was consistent with the SAFE Act definition. To clear up any possible confusion, these amendments define "mortgage loan" to be the same as "residential mortgage loan" and all the SAFE definition elements are included in the "residential mortgage loan" definition.

This change is reflected in amendments to AS 06.60.990 (definitions). *See* section 81, paragraph (22), page 38, line 10, and paragraph (33), page 40, lines 13-17.

a. "Internet" added to the list of communication methods for loan processor or underwriter advertising. *See* AS 06.60.013 (loan processors or underwriters), section 4, page 3, line 28.

b. Exemption clarified for an individual who offers or negotiates a loan secured by a mortgage on his or her own residence. Exemption applies to sellers (not buyers). *See* AS 06.60.015 (exemptions), section 5, page 4, line 16.

c. Time limit added for department action on a renewal application - within 60 days after the application is filed. *See* AS 06.60.085 (renewal of license), section 21, page 12, lines 15-16.

d. Record of department approval required for a change in control of a mortgage licensee (electronic record of registry will meet requirement). See AS 06.60.130(a) (change in business control or business operations), section 31, page 14, lines 29-30.

e. Three typographical edits and one change of wording from this "section" to this "chapter."

In the House Labor and Commerce Committee, AS 45.50.471(b)(52) was added to the repealer section. Section 86, page 42, line 4.

Along with that repeal there was a legislative intent added to section 1 to clarify that such a repeal does not limit or prevent an action by the attorney general, or by another person or class of persons. Section 1, page 1, line 6 through page 2, line 4



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Banking and Securities

Sean Parnell, Governor
Emil Natti, Commissioner
Lorie Hovanes, Director

December 28, 2009

The Honorable Joe Paskvan
State Senate
1292 Sadler Way Suite 308
Fairbanks AK, 99701

Re: Mortgage Lending Bill Draft

Dear Senator Paskvan:

Enclosed for your consideration is a draft bill related to the regulation of residential mortgage lending. This bill is a continuation of the legislative work on this subject that began in the 2009 session. As you know, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. 5101-5116 (SAFE Act), requires changes in state law. Although the legislature provided authority for the state to participate in the Nationwide Mortgage Licensing System and Registry ("NMLSR" or "national registry"), which is one of the requirements of the SAFE Act, the other requirements of the SAFE Act remain to be addressed.

To recap last year's progress, the legislature first considered a bill that would have allowed the department to make the changes required by the SAFE Act through regulation. The bill was later revised to incorporate more of the SAFE requirements in the statute. Near the end of the session, an alternate bill was introduced and enacted for the limited purpose of granting the department authority to participate in the national registry.

General Description of Draft Bill

The attached draft bill addresses all the remaining requirements of the SAFE Act. Most importantly, it provides for the licensing of mortgage loan originators in conformity with the federal requirements, which include pre-licensing education and testing, authorization for obtaining background checks and credit reports, and continuing education. This bill also aligns various aspects of state law with SAFE Act requirements. For example, this bill provides for annual (rather than biennial) licensing as required for the registry under the SAFE Act.

In accordance with last year's legislation and regulations that have been adopted under it, mortgage lending professionals are now being licensed in Alaska through the national registry. The objectives of the registry (and its value), among other things, are (1) to aggregate and improve the flow of information to and between regulators; (2) provide increased accountability and tracking of mortgage lending professionals; (3) enhance consumer protections; (4) reduce fraud in the residential mortgage loan origination process; and (5) provide consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage lending professionals. An additional benefit to the industry is the increased uniformity of the license application process, when doing business in more than one state.

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Banking and Securities

Sean Parnell, Governor
Emil Notti, Commissioner
Lorie Hovance, Director

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Mortgage Lending Bill Draft
December 21, 2009

Loan originators who are employees of federally regulated depository institutions and their subsidiaries are required to register through the NMLSR, but are not subject to state licensing requirements. Our mortgage lending law applies to non-depository lenders; while banks, savings associations, and credit unions are depository institutions subject to federal oversight.

This bill incorporates the minimum licensing requirements of the SAFE Act. The state will conduct a background check on the applicant, based on the submission of fingerprints, personal history and experience, an independent credit report, and information relating to any administrative, civil, or criminal findings by any governmental institution. To be eligible for a license, an individual must not have been convicted of any felony within the preceding seven years or convicted of certain types of felonies at any time prior to application. Applicants must complete at least twenty hours of approved pre-licensing education, which shall include at least three hours on federal law and regulation; three hours of ethics, including fraud prevention, consumer protection, and fair lending issues; and two hours regarding lending standards for nontraditional mortgage products. The applicant must pass a written test approved by the NMLSR, which includes a state law component, administered by an approved test provider. Mortgage licensees must submit reports of condition to the NMLSR.

The SAFE Act requires that the state provide effective supervision and enforcement, and the draft bill provides for more specificity in this area, in accordance with the model state law developed by the Conference of State Banking Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) and approved by HUD and the standards in SAFE that HUD will follow in a state where it establishes a licensing system.

Timeline for Compliance

The SAFE Act is administered by the Department of Housing and Urban Development (HUD), which must either approve each state's licensing and registration program or establish a HUD-operated program in that state. If HUD determines that a state does not have a SAFE-compliant program in place by the statutory deadline, or if a state's mortgage loan origination licensing standards do not meet the minimum requirements of the Act, HUD is charged with establishing and implementing a system for licensing mortgage loan originators in that state.

The SAFE Act requires states to have compliant standards in place by July 31, 2009, for states whose legislatures meet annually. HUD may extend the deadline to be in compliance for up to 24 months on evidence that a state is making a good faith effort to adopt and implement the new mortgage licensing requirements.

On December 15, 2009, HUD published proposed rules regarding the procedures and standards it will follow in exercising its authority under the SAFE Act. Under those proposed rules, HUD provides deadlines for mortgage loan originators to meet the new education, testing, and background check requirements. For those licensed under a system enacted prior to the SAFE-compliant system, the

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proposed rules require that compliance occur by December 31, 2010. For individuals not licensed under a prior scheme, the deadline for compliance may not extend past July 31, 2010. The proposed rules state that HUD may approve later compliance dates based on unusual hardship to a substantial number of mortgage loan originators through no fault of the originators or the state.

Nationwide Compliance

According to a posting on the CSBS website,* which indicates it was undated on August 5, 2009, only one state (Minnesota) has not enacted SAFE-compliant legislation. Because Alaska enacted legislation that provided authority for participation in the national registry, that legislation is reflected on the posted chart. The chart does not indicate whether other states have passed legislation that so far only partially complies with the SAFE Act.

We look forward to working with you, your staff, and other legislators this session. You may call on me or section chief Patrice Walsh at any time, should you have questions or require further information.

Sincerely yours,

Lorie L. Hovanec

Lorie L. Hovanec, Director
Division of Banking and Securities

cc: Emil Notti, Commissioner, DCCED
Tyson Fick, Legislative Liaison, DCCED

*<http://mortgage.nationwidelicensing.system.org/SAFE/NMLS%20Document%20Library/State%20SAFE%20Legislation.pdf>

STATES MOVE AGGRESSIVELY TO IMPLEMENT SAFE ACT AND IMPROVE MORTGAGE SUPERVISION

Title V of P.L. 110-289, the *Secure and Fair Enforcement for Mortgage Licensing Act of 2008* ("SAFE Act"), was passed on July 30, 2008. The SAFE Act gave states one year to pass legislation requiring the licensure of mortgage loan originators according to national standards and the participation of state agencies on the Nationwide Mortgage Licensing System and Registry (NMLS).

States have moved in an unprecedented manner in just **ONE YEAR** to accomplish the following:

Legislation

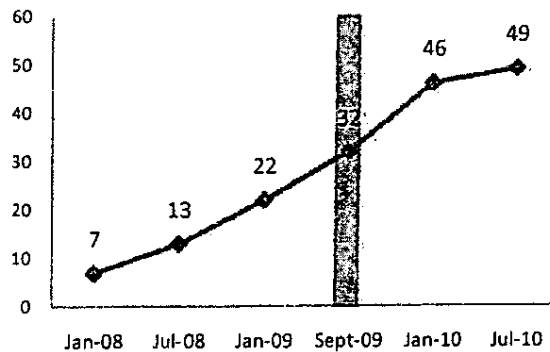
- **49 states** and the District of Columbia have *passed* legislation implementing the SAFE Act.
 - Puerto Rico and the Virgin Islands have *legislation pending*.
- **All** legislation enacted to date includes standardized definitions, national pre-licensure and continuing education and testing requirements, and criminal background standards for mortgage loan originators as contained in the SAFE Act.
- **Virtually all** of the legislation enacted to date includes a robust set of prohibited acts and practices to protect consumers as promoted in the CSBS/AARMR Model State Law.
- **Uniformity in mortgage regulation** has been fostered and driven by enactment of the SAFE Act as the 50 existing state licensing laws are revised in a nationally consistent manner to establish standardized licensing applications, processes and practices.



Participation in NMLS

- **32 states** and territories are already participating on the Nationwide Mortgage Licensing System.
 - 14 more states and territories (for a total of 46) are scheduled to participate by January 2010.
- **90% of states** are scheduled to be participating in NMLS by January 2010, just two years after launch of the system.

States / Territories Participating on NMLS



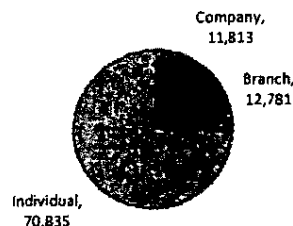
Testing and Education Standards

- NMLS developed the psychometrically valid SAFE Mortgage Loan Originator Test, with the national component of the test available for all state licensed mortgage loan originators on July 30, 2009.
- NMLS developed eleven SAFE state component tests that were available on July 30, 2009. Twenty-four state component tests will be available by December 2009 and the remaining state tests will be rolled out on a quarterly basis over the next year.
- Since July 13, 2009, 2,415 licensees or applicants have enrolled to take the national or state test components and since July 30, 2009, 664 test components have been administered.
- NMLS developed policy and procedures for approving course providers to offer pre-licensure and continuing education according to national standards. As of June 22, 2009, NMLS had approved 90 course providers, and as of July 15, 2009, had approved 70 pre-license education courses.
- As of September 1, 2009, state licensed MLOs and applicants have begun taking NMLS approved courses.

Coordinated Licensing of Companies and Mortgage Loan Originators

- **70,835 mortgage loan originators** in 32 states and territories have been issued a NMLS unique identifier and are being tracked in the system.
- **11,813 mortgage broker and lender companies** in 32 states and territories have also received an NMLS unique identifier and are being tracked in the system.

Companies, Branches and Individuals Tracked in NMLS



More information about state efforts to implement the SAFE Act and improve supervision can be found on the CSBS website at www.csbs.org.

More information about the Nationwide Mortgage Licensing System and Registry (NMLS) can be found at <http://www.stateregulatoryregistry.org/NMLS>.

State SAFE Act Legislative Tracking

State/Agency	Bill Number	Enacted
Alabama	SB 249	5/21/2009
Alaska	HB 221	6/16/2009
American Samoa		
Arizona	HB 2143	7/13/2009
Arkansas	HB 1881	4/1/2009
California DOC	SB 36	9/8/2009
California DRE	SB 36	9/8/2009
Colorado	HB 1085	5/21/2009
Connecticut	SB 948	6/18/2009
Delaware	SB 73	7/6/2009
District of Columbia	B17-1021	1/12/2009
Florida	SB 2226	6/29/2009
Georgia	HB 312	4/29/2009
Guam		
Hawaii	SB 1218	7/16/2009
Idaho	HB 169	4/7/2009
Illinois	HB 4011	7/31/2009
Indiana DFI	SS 1001	6/30/2009
Indiana SOS	HB 1646	5/12/2009
Iowa	SF 355	4/15/2009
Kansas	SB 240	3/27/2009
Kentucky	HB 106	3/27/2009
Louisiana	HB 810	7/10/2009
Maine	SP0523	6/11/2009
Maryland	HB 292/SB 269	4/14/2009
Massachusetts	HB 4127	7/31/2009
Michigan	SB 462/	7/29/2009
Minnesota		
Mississippi	SB 2983	4/15/2009
Missouri	HB 382	7/8/2009
Montana	SB 351	4/20/2009
Nebraska	LB 328	4/22/2009
Nevada	AB 523	6/8/2009
New Hampshire	HB 610.FN	7/31/2009
New Jersey	AB 3816	5/4/2009
New Mexico	SB 342 / HB 316	4/6/2009
New York	A6924	7/11/2009
North Carolina	HB 1523	7/31/2009
North Dakota	SB 2160	4/9/2009
Northern Mariana Islands		
Ohio	HB 1	7/17/2009
Oklahoma	SB 1062	5/12/2009
Oregon	HB 2189	6/26/2009
Pennsylvania	HB 1654	8/5/2009
Puerto Rico	PC 1578	
Rhode Island	H 5704 / S 0461	7/16/2009
South Carolina	SB 673	6/3/2009
South Dakota	HB 1060	3/16/2009
Tennessee	HB2316	6/23/2009
Texas OCCC	HB 10	6/19/2009
Texas SML	HB 10	6/19/2009
Utah DFI	HB 286	3/20/2009
Utah DRE	SB 31	2/20/2009
Vermont	HB 171	5/21/2009
Virgin Islands	Bill 28-0106	12/2/2009
Virginia	SB 1171	3/27/2009
Washington	SB 1749/ HB 1621	4/17/2009
West Virginia	SB 532	5/7/2009
Wisconsin	SB62	2/19/2009
Wyoming	HB 169	3/12/2009

This page is located on the U.S. Department of Housing and Urban Development's Homes and Communities Web site at <http://www.hud.gov/offices/hsg/ramh/safe/smlfact.cfm>.



SAFE Mortgage Licensing Act

About the Act

The Housing and Economic Recovery Act of 2008, signed into law on July 30, 2008 (Public Law 110-289) (HERA), constitutes a major new housing law that is designed to assist with the recovery and the revitalization of America's residential housing market - from modernization of the Federal Housing Administration, to foreclosure prevention, to enhancing consumer protections. The SAFE Act is a key component of HERA.

- Information by State
- Print version

Safe Act Model State Law

The SAFE Act is designed to enhance consumer protection and reduce fraud by encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators and for the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry for the purpose of achieving the following objectives:

- (1) Providing uniform license applications and reporting requirements for state licensed-loan originators;
- (2) Providing a comprehensive licensing and supervisory database;
- (3) Aggregating and improving the flow of information to and between regulators;
- (4) Providing increased accountability and tracking of loan originators;
- (5) Streamlining the licensing process and reducing regulatory burden;
- (6) Enhancing consumer protections and supporting anti-fraud measures;
- (7) Providing 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) Establishing 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) Facilitating responsible behavior in the subprime mortgage market place and providing comprehensive training and examination requirements related to subprime mortgage lending;
- (10) Facilitating the collection and disbursement of consumer complaints on behalf of state mortgage regulators.

The new standards, as well as the uniformity and consistency of such standards, directed to be established nationwide by the SAFE Act present a significant step in the effort to increase integrity in the residential mortgage loan market, enhance consumer protections, and reduce fraud. The SAFE Act encourages states to participate in the Nationwide Mortgage Licensing System and Registry, and

requires states to have in place, by law or regulation, a system for licensing and registering loan originators that meets the requirements of sections 1505, 1506, and 1508(d) of the SAFE Act. The SAFE Act requires the states to have the licensing and registration system in place by: (1) July 31, 2009, for states whose legislatures meet annually; and (2) July 31, 2010, for states whose legislatures meet biennially. For both this 1-year period and 2-year period, HUD may extend the deadline, by not more than 24 months, if HUD determines that a state is making a good faith effort to establish a state licensing law that meets the minimum requirements of the SAFE Act. (See the complete text of the SAFE Act.)

To aid and facilitate states' compliance with the requirements of the SAFE Act, the Act directs the establishment of a nationwide mortgage licensing system and registry (NMLSR), to be developed and maintained by CSBS and AARMR. If HUD determines that a state's mortgage loan originator licensing standards do not meet the minimum requirements of the Act, HUD must implement and administer a licensing system for that state. A loan originator in such a state would have to comply with the requirements of HUD's SAFE Act-compliant licensing system for that state as well as with any applicable state requirements. A HUD license for a state would be valid only for that state, even if HUD must implement licensing systems in multiple states. Additionally, if HUD determines that the NMLSR is failing to meet the requirements and purposes of the SAFE Act, HUD must establish a system that meets the requirements of the SAFE Act.

For the last several months, CSBS and AARMR have undertaken considerable outreach to states and the financial services industry regarding the development of the NMLSR and of legislation that would meet the requirements of the SAFE Act. CSBS and AARMR have developed a model state law (MSL) designed to assist and facilitate states to enact legislation on mortgage loan originator licensing that complies with the SAFE Act and by the deadlines imposed by the SAFE Act. While states are charged with enacting licensing standards that meet the requirements of the SAFE Act, overall responsibility for interpretation, implementation, and compliance with the SAFE Act rests with HUD. In this regard, CSBS and AARMR requested that HUD review the model legislation, and advise of its sufficiency in meeting applicable minimum requirements of the SAFE Act.

CSBS/AARMR Model Legislation

HUD reviewed the model legislation to determine whether it meets the minimum requirements of the SAFE Act and finds that it does. State legislation that follows the provisions of the model legislation, whether by statute or regulation, will be determined to have met the applicable minimum requirements of the SAFE Act. (The complete text of the model legislation, reviewed by HUD, is provided here.) More information about the model legislation can be found at CSBS's website. The commentary that follows presents HUD's views and interpretations of certain statutory provisions that required consideration and analysis in determining that the model legislation meets the minimum requirements of the SAFE Act.

HUD Commentary

Through this commentary, HUD advises of the analysis of the SAFE Act that was undertaken in reviewing the model legislation and of HUD's interpretation of certain provisions in the SAFE Act. These interpretations are designed to assist the states, as well as members of the public, in understanding how HUD determined that the model legislation meets the minimum requirements of the SAFE Act, and to assist states in adopting legislation or regulations that meet the minimum requirements of the SAFE Act.

A. Standards in Legislation May Exceed Standards in SAFE Act

The SAFE Act's licensing and registration standards for mortgage loan originators are minimum standards. (See section 1505(b).) Legislation enacted or regulations promulgated by a state may exceed the minimum standards of the SAFE Act.

interpretation in section XX.XXX.040(1).

F. Felony Convictions

Section 1505(b)(2) of the SAFE Act provides that, to be eligible for a license, an individual must not have been convicted of any felony within the preceding seven years or convicted of certain types of felonies at any time prior to application. Since the provision is triggered by a conviction, rather than by an extant record of a conviction, HUD interprets the provision to make an individual ineligible for a loan originator license even if the conviction is later expunged. Pardoned convictions, in contrast, are generally treated as legal nullities for all purposes under state law and would not render an individual ineligible. The law under which an individual is convicted, rather than the state where the individual applies for a license, determines whether a particular crime is classified as a felony. The MSL clarifies that a pardoned conviction does not render an individual ineligible for a license under section XX.XXX.060(2)(c).

G. Surety Bond

Section 1508(d)(6) of the SAFE Act provides that states must set minimum net worth or surety bond requirements or establish a recovery fund paid into by loan originators. HUD has determined that a state may comply with the SAFE Act requirement by providing that, in the case of a company that employs more than one loan originator, the bonding requirement may be met at the company level. Individual loan originators would not have to be bonded separately. The MSL incorporates this interpretation in section XX.XXX.140(1).

FURTHER INFORMATION CONTACT:

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Email: safeprogram@hud.gov

U.S. Department of Housing and Urban Development
451 7th Street, S.W., Washington, DC 20410
Telephone: (202) 708-1112 [Find the address of a HUD office near you](#)



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

February, 2009

[To: State Legislative Leaders and Financial Services
Committee Chairpersons and Vice Chairpersons]

Joe Hackney
*Speaker of the House
North Carolina
President, NCSL*

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

William T. Pound
Executive Director

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.

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.

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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 cursive script that reads "Joe Hackney". The signature is written in black ink and is positioned above the typed name.

Speaker Joe Hackney, NCSL President

From: Jordan Estey **On Behalf Of** NCOIL President Sen. James Seward, NY
Sent: Friday, March 06, 2009 2:58 PM
Subject: NCOIL State Mortgage Licensing Model Act
Importance: High
March 6, 2009

Dear Colleague:

On behalf of the National Conference of Insurance Legislators (NCOIL), I am forwarding to you a model law that would establish critical mortgage licensing standards in your state. The *State Model Legislation for Implementation of Public Law 110-289, Title V—S.A.F.E. Mortgage Licensing Act* was unanimously approved by the NCOIL Executive Committee during the NCOIL Spring Meeting in Washington, DC.

The model legislation provides a template for states to enact and comply with the *S.A.F.E. Act's* minimum requirements for licensing state residential loan originators—including that all mortgage loan originators be either licensed or registered through a Nationwide Mortgage Licensing System (NMLS), which state regulators launched in 2008.

If a state legislature fails to implement all of the S.A.F.E. Act requirements by July 31, 2009, the U.S. Department of Housing and Urban Development (HUD) could establish a duplicative and costly regulatory regime to license and regulate loan originators in your state.

The model bill—developed by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR)—addresses national testing, prelicensing, continuing education, background checks, and license suspension, termination, and nonrenewal, among other things.

For your reference, I am also forwarding a CSBS document that provides additional information on the *Housing and Economic Recovery Act of 2008* and on the *S.A.F.E. Act*, specifically.

NCOIL is an organization of state legislators whose primary area of interest is insurance legislation and regulation. Many legislators active in NCOIL either chair or are members of the committees responsible for insurance legislation in their respective state houses across the country. More information is available at www.ncoil.org.

Please do not hesitate to contact Mike Humphreys in the NCOIL Washington, DC, Office at 202-220-3014 or at mhumphreys@ncoil.org should you have any questions.

Sincerely,

Senator James Seward
NCOIL President
New York Senate