

SB

279

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279</subject><comm>SFIN26</comm></target>



Senator Joe Paskvan

Alaska State Senate • District E • Fairbanks • Ft Wainwright

Sponsor Statement 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

Senate Bill 279: Mortgage Lending

"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

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 2-3

Require 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.

Section 4

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

Section 5

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 6

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

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included in statute and required by SAFE.

Section 7

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

Section 8

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 9

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 10

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

Section 11

Permits fees under this chapter to be set in regulation.

Section 12

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

Section 13

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 14

Authorizes the department to adopt regulations to cover bonding requirements.

Section 15

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 16

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 17

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 18

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 19

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

Section 20

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 21

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 22

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 23

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

Section 24

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

Section 25

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 26

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 27

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 28

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

Section 29

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 30

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 31

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

Sections 32-34

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

Section 35

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 36

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 37

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 38

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

Section 39

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 40

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 41-42

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

Section 43

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 44

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

Section 45

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 46

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 47

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 48

Adds a new subsection to define "escrow account."

Section 49

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 50

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

Section 51

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

Sections 52-53

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

Section 54-55

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

Section 56

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 57

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 58

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 59

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 60-62

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

Section 63

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 64-71

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

Section 72

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 73

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 74-75

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

Section 76

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 77

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 78

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 79

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 80

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

Section 81

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 82

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

Section 83

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

Section 84

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 85

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.

Section 86

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 87

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 88

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 89

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

Section 90

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

Heard &
Held
3/23/10

SENATE BILL NO. 279

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY SENATOR PASKVAN

Introduced: 2/15/10
Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation of residential mortgage lending, including the licensing of
2 mortgage lenders, mortgage brokers, and mortgage loan originators, and compliance
3 with certain federal laws relating to residential mortgage lending; and providing for an
4 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 06.60 [, A SMALL MORTGAGE LENDER UNDER AS 06.60,
13 AND AN ORIGINATOR UNDER AS 06.60 WHO IS EMPLOYED BY OR WORKS
14 UNDER EXCLUSIVE CONTRACT FOR A SMALL MORTGAGE LENDER; IN

1 THIS PARAGRAPH,

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

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

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

9 * **Sec. 2.** AS 06.60.010 is repealed and reenacted to read:

10 **Sec. 06.60.010. Mortgage lender or mortgage broker license required.** (a)

11 Unless exempt under AS 06.60.015, a person may not operate in the state as a
12 mortgage lender or mortgage broker with respect to a dwelling located in the state
13 unless the person is licensed as a mortgage lender or mortgage broker under this
14 chapter.

15 (b) A mortgage lender or mortgage broker required to be licensed under this
16 chapter shall register with the registry and maintain a valid unique identifier issued by
17 the registry.

18 (c) A mortgage license may cover more than one location of a mortgage
19 licensee.

20 (d) A person who operates as both a mortgage lender and a mortgage broker is
21 only required to obtain one mortgage license.

22 * **Sec. 3.** AS 06.60 is amended by adding new sections to read:

23 **Sec. 06.60.012. Mortgage loan originator license required.** (a) Unless
24 exempt under AS 06.60.015, an individual may not operate in the state as a mortgage
25 loan originator with respect to a dwelling located in the state unless the individual is
26 licensed as a mortgage loan originator under this chapter.

27 (b) An individual required to be licensed as a mortgage loan originator shall

28 (1) register with the registry and maintain a valid unique identifier
29 issued by the registry;

30 (2) work under exclusive contract for, or as an employee of, a
31 mortgage licensee; and

1 (3) be sponsored in the registry by a mortgage licensee under a
 2 sponsorship approved in the registry by the department; in this paragraph, "sponsored"
 3 means authorized to conduct business as a mortgage loan originator under the
 4 supervision of a mortgage licensee.

5 **Sec. 06.60.013. Loan processors or underwriters.** (a) A loan processor or
 6 underwriter who is an independent contractor may not operate as a loan processor or
 7 underwriter unless the independent contractor loan processor or underwriter is
 8 licensed as a mortgage loan originator under this chapter. An independent contractor
 9 loan processor or underwriter licensed as a mortgage loan originator shall register with
 10 the registry and maintain a valid unique identifier issued by the registry.

11 (b) An individual engaged solely in loan processor or underwriter activities
 12 who is not an independent contractor is not required to be licensed as a mortgage loan
 13 originator under this chapter if the individual does not represent to the public, through
 14 advertising or other means of communicating or providing information, including the
 15 use of business cards, stationery, brochures, signs, rate lists, or other promotional
 16 items, that the individual can or will perform any of the activities of a mortgage loan
 17 originator.

18 * **Sec. 4.** AS 06.60.015 is repealed and reenacted to read:

19 **Sec. 06.60.015. Exemptions.** (a) The following persons are exempt from the
 20 mortgage lender or mortgage broker licensing requirements of this chapter:

21 (1) a depository institution;

22 (2) a subsidiary that is

23 (A) owned and controlled by a depository institution; and

24 (B) regulated by a federal banking agency; or

25 (3) an institution regulated by the Farm Credit Administration.

26 (b) The following individuals are exempt from the mortgage loan originator
 27 licensing requirements of this chapter:

28 (1) a registered mortgage loan originator, when acting for an entity
 29 described in (a)(1), (2), or (3) of this section;

30 (2) an individual who offers or negotiates terms of a residential
 31 mortgage loan with or on behalf of an immediate family member of the individual; in

1 this paragraph, "immediate family member" means a spouse, child, stepchild, sibling,
2 stepsibling, parent, stepparent, grandparent, or grandchild;

3 (3) an individual who offers or negotiates terms of a residential
4 mortgage loan secured by a dwelling that serves as the individual's residence;

5 (4) a licensed attorney who negotiates the terms of a residential
6 mortgage loan on behalf of a client as an ancillary matter to the attorney's
7 representation of the client, unless the attorney is compensated by a lender, a mortgage
8 broker, or another mortgage loan originator or by an agent of a lender, a mortgage
9 broker, or another mortgage loan originator.

10 * **Sec. 5.** AS 06.60 is amended by adding a new section to read:

11 **Sec. 06.60.016. Registry.** (a) The department may participate in the registry
12 and pay the fees required for participation in the registry.

13 (b) The department

14 (1) may establish relationships or contracts with the registry or other
15 entities designated by the registry to collect and maintain records and process
16 transaction fees or other fees related to licensees or other persons subject to this
17 chapter;

18 (2) shall require mortgage licensees and mortgage loan originators to
19 register with the registry; and

20 (3) shall establish by regulation a process that allows mortgage
21 licensees and mortgage loan originators to challenge information entered into the
22 registry by the department.

23 (c) The department may adopt emergency regulations under AS 44.62
24 (Administrative Procedure Act) to implement this section, including emergency
25 regulations for the assessment of fees.

26 * **Sec. 6.** AS 06.60.020 is repealed and reenacted to read:

27 **Sec. 06.60.020. Application for license.** (a) An application for a license under
28 this chapter must

29 (1) be on the form prescribed by the department and the registry;

30 (2) contain complete information regarding the applicant;

31 (3) include fingerprints of the applicant, as needed to conduct a

1 background check; and

2 (4) contain other information or supporting material that the
3 department may require concerning the applicant, including the organization and
4 operations of an applicant for a mortgage license and the financial responsibility,
5 background, experience, and activities of the applicant.

6 (b) In this section, "applicant" includes a control person of an applicant for a
7 mortgage license.

8 * Sec. 7. AS 06.60.026 is amended to read:

9 **Sec. 06.60.026. Transfer of mortgage loan originator license.** A person who
10 holds a mortgage loan [AN] originator license may not transfer or assign the
11 mortgage loan originator license.

12 * Sec. 8. AS 06.60.027 is repealed and reenacted to read:

13 **Sec. 06.60.027. Background checks.** (a) To apply for a mortgage loan
14 originator license or a mortgage license, the applicant shall, at a minimum, furnish
15 information concerning the applicant's identity to the registry or the department,
16 including

17 (1) fingerprints for submission to the Federal Bureau of Investigation
18 and any governmental agency or entity authorized to receive that information for a
19 state, national, and international criminal history background check; and

20 (2) personal history and experience in a form prescribed by the registry
21 and authorization for the registry and the department to obtain

22 (A) an independent credit report from a consumer reporting
23 agency; and

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

26 (b) For the purposes of this section, the department may use the registry as an
27 agent for requesting information from and distributing information to the United States
28 Department of Justice, another governmental agency, or another source directed by the
29 department.

30 (c) As part of the investigation of an application for a license under this
31 chapter, the department or the registry shall

1 (1) submit fingerprints of the applicant and a control person of the
 2 applicant to the governmental agency or entity authorized to receive the fingerprints
 3 for a state, national, or international criminal history background check under (a)(1) of
 4 this section; and

5 (2) obtain an independent credit report and other information related to
 6 administrative, civil, or criminal findings regarding the applicant and each control
 7 person of the applicant under (a)(2) of this section.

8 * **Sec. 9.** AS 06.60.035(a) is amended to read:

9 (a) When [EXCEPT AS PROVIDED BY (c) OF THIS SECTION, WHEN]
 10 an applicant submits an application for a license under this chapter to the department,
 11 the applicant shall pay to the department

12 (1) an [A NONREFUNDABLE] application fee [OF \$250] in partial
 13 payment of those investigation expenses incurred by the department; and

14 ~~—————~~ (2) an annual [A BIENNIAL] license fee [OF \$500] for the period
 15 that terminates on December 31 [TWO YEARS] after the date the license is issued;
 16 after this payment, the annual [BIENNIAL] license fee is due every year, subject to
 17 renewal by the department [TWO YEARS ON THE ANNIVERSARY DATE OF
 18 THE ORIGINAL ISSUANCE OF THE LICENSE].

19 * **Sec. 10.** AS 06.60.035(c) is repealed and reenacted to read:

20 (c) The fees imposed by this section are in addition to the fees charged by the
 21 registry and the business license fees assessed under AS 43.70 (Alaska Business
 22 License Act).

23 * **Sec. 11.** AS 06.60.035 is amended by adding a new subsection to read:

24 ~~—————~~ (d) The department may establish by regulation the amount and manner of
 25 payment of application fees, examination fees, license fees, permit fees, investigation
 26 fees, and all administrative or other fees or penalties under this chapter. The fees
 27 established under this chapter are nonrefundable.

28 * **Sec. 12.** AS 06.60 is amended by adding a new section to read:

29 **Sec. 06.60.038. Prelicensing and relicensing education of mortgage loan**
 30 **originators.** (a) Before being licensed as a mortgage loan originator, an individual
 31 ~~—————~~ shall complete at least 20 hours of education approved under (b) of this section. At a

1 minimum, the education must include

2 (1) three hours of instruction in federal statutes and regulations relating
3 to mortgage origination, fraud prevention, consumer protection, the nontraditional
4 mortgage marketplace, and fair lending.;

5 (2) three hours of instruction in ethics, including instruction on issues
6 related to fraud prevention, consumer protection, and fair lending; and

7 (3) two hours of training related to lending standards for the
8 nontraditional mortgage product marketplace.

9 (b) For the purposes of (a) of this section, prelicensing education courses must
10 be approved by the department. Approval of a prelicensing education course includes
11 review and approval of the course provider.

12 (c) Nothing in this section precludes a prelicensing education course that is
13 approved by the department and that is provided by the employer of the applicant, an
14 entity affiliated with the applicant, or a subsidiary or affiliate of an employer or entity
15 affiliated with the applicant.

16 (d) Prelicensing education may be offered in a classroom, on-line, or by other
17 means approved by the department.

18 (e) The department shall accept the prelicensing education requirements
19 approved by another state as credit toward completion of prelicensing education
20 requirements of this state.

21 * **Sec. 13.** AS 06.60.040 is repealed and reenacted to read:

22 **Sec. 06.60.040. Testing of mortgage loan originators.** (a) Before being
23 licensed as a mortgage loan originator, an individual shall pass, under the standards
24 established by this section, a qualified written national test and a qualified written state
25 test. The national test and test provider must be approved by the registry, and the state
26 test and test provider must be approved by the department.

27 (b) The department shall treat a written test as a qualified written national test
28 for purposes of (a) of this section if the department finds that the test adequately
29 measures the applicant's knowledge and comprehension in appropriate subject areas,
30 including

31 (1) ethics; and

1 (2) federal and state statutes and regulations relating to mortgage
2 origination, fraud prevention, consumer protection, the nontraditional mortgage
3 marketplace, and fair lending.

4 (c) This section does not prohibit a test provider approved by the registry from
5 providing a test at the location of the employer of the applicant, the location of a
6 subsidiary or affiliate of the employer of the applicant, or the location of an entity with
7 which the applicant holds an exclusive arrangement to conduct the business of a
8 mortgage loan originator.

9 (d) To pass a qualified written test, an applicant must answer at least 75
10 percent of the questions correctly.

11 (e) An individual may retake a test three consecutive times, but each
12 consecutive taking of a test must occur at least 30 days after taking the preceding test.

13 (f) After failing three consecutive takings of the same test, an individual shall
14 wait at least six months before retaking the test.

15 (g) A licensed mortgage loan originator who fails to maintain a valid license
16 for a period of five years or longer shall retake the test. The period without a valid
17 license under this subsection does not include the time the individual is a registered
18 mortgage loan originator.

19 (h) The department may assess a fee for each administration of a qualified
20 written test.

21 * Sec. 14. AS 06.60.045(a) is amended to read:

22 (a) An applicant for a mortgage license shall file with the application
23 submitted to the department under AS 06.60.020 a bond with one or more sureties,
24 **The department shall establish by regulation the amount of the required bond**
25 **and the standards and procedures for recovery on the bond** [IN THE AMOUNT
26 OF \$25,000 UNDER WHICH THE APPLICANT IS THE OBLIGOR]. The bond
27 must be satisfactory to the department.

28 * Sec. 15. AS 06.60.045(d) is amended to read:

29 (d) The bond required under (a) of this section must be continuous until **three**
30 **years after** the department revokes or otherwise terminates the license.

31 * Sec. 16. AS 06.60.050(a) is amended to read:

1 (a) Within 30 days after the date the department determines that it has
 2 received a complete application under AS 06.60.020 [AS 06.60.020 OR 06.60.025],
 3 the required bond if the application is for a mortgage license, and any required fees
 4 and investigative costs, the department shall either grant or deny the license.

5 * Sec. 17. AS 06.60.060 is repealed and reenacted to read:

6 **Sec. 06.60.060. Determinations before licensing.** Before granting a license
 7 under this chapter, the department shall determine, at a minimum, that

8 (1) the applicant has complied with the requirements of this chapter for
 9 obtaining the license;

10 (2) the applicant, including a control person of the applicant, has

11 (A) never had a mortgage lender, mortgage broker, or mortgage
 12 loan originator license revoked by a governmental jurisdiction, except that, if a
 13 revocation has been formally vacated, the revocation is not considered a
 14 revocation under this paragraph; in this paragraph,

15 (i) a control person of an applicant for a mortgage
 16 license includes an entity over which the control person exercised
 17 control at the time of the revocation; and

18 (ii) an applicant for a mortgage loan originator license
 19 includes an entity over which the applicant exercised control at the time
 20 of the revocation;

21 (B) not been convicted of, or pled guilty or no contest to, a
 22 felony involving an act of fraud or dishonesty, a breach of trust, or money
 23 laundering, in a domestic, foreign, or military court during the seven-year
 24 period preceding the date of the application, or at any time preceding the date
 25 of application if the felony involved an act of fraud, dishonesty, a breach of
 26 trust, or money laundering; however, if the applicant has been pardoned for the
 27 conviction, the conviction is not considered a conviction under this
 28 subparagraph;

29 (C) demonstrated financial responsibility, character, and
 30 general fitness sufficient to command the confidence of the community and to
 31 warrant a determination that the applicant will operate honestly, fairly, and

1 efficiently within the purposes of this chapter; under this subparagraph,

2 (i) an applicant does not show financial responsibility if
3 the applicant has shown inattention to or neglect of the management of
4 the person's own financial condition;

5 (ii) a determination that an applicant has not shown
6 financial responsibility may include current outstanding judgments
7 against the applicant, except judgments related solely to a claim related
8 to medical expenses; current outstanding tax liens or other government
9 liens and filings against the applicant; foreclosures of the applicant's
10 property within the three years preceding the date of the application;
11 and a pattern by the applicant of seriously delinquent accounts within
12 the three years preceding the date of the application;

13 (3) the applicant for a mortgage loan originator license

14 (A) has completed the precicensing education requirement
15 described in AS 06.60.038;

16 (B) has passed a national test and a state test that meet the test
17 requirements described in AS 06.60.040; and

18 (C) has paid the fund fee as required by AS 06.60.550; and

19 (4) the applicant for a mortgage license has provided a bond as
20 required by AS 06.60.045.

21 * **Sec. 18.** AS 06.60 is amended by adding a new section to article 1 to read:

22 **Sec. 06.60.077. Authority to issue provisional license.** (a) Subject to (b) of
23 this section, the department may issue a provisional license to an applicant for a
24 mortgage license if the department has made all determinations under AS 06.60.060
25 necessary for licensure except those determinations based on the criminal history
26 background check required by AS 06.60.027.

27 (b) A provisional license may be granted under this section if the

28 (1) receipt by the department of the results of the criminal history
29 background check is delayed more than 60 days after the date the fingerprints are
30 submitted to the governmental agency that conducts the criminal history background
31 check; and

1 (2) delay described in (1) of this subsection is not caused by the
2 applicant.

3 (c) The duration of a provisional license issued under this section may not
4 exceed 90 days.

5 * **Sec. 19.** AS 06.60.080 is amended to read:

6 **Sec. 06.60.080. Duration of license.** Except for a provisional license issued
7 under AS 06.60.077, a [A] license issued under this chapter remains in effect until
8 December 31 of the year in which [FOR TWO YEARS AFTER] the license is
9 issued, unless the license is revoked, suspended, or surrendered, or becomes
10 [BECOMING] inactive under this chapter.

11 * **Sec. 20.** AS 06.60.085 is repealed and reenacted to read:

12 **Sec. 06.60.085. Renewal of license.** (a) If a licensee intends to renew a license,
13 the licensee shall submit to the department

14 (1) a renewal application at a time and in the form and manner
15 established by the department and the registry;

16 (2) the annual license fee;

17 (3) if the renewal is for a mortgage license,

18 (A) a report, as required by regulation, identifying any changes
19 in the information provided to the department; and

20 (B) current information indicating that the mortgage licensee
21 continues to meet the minimum standards for license issuance;

22 (4) if the renewal is for a mortgage loan originator license,

23 (A) a report, as required by regulation, identifying any changes
24 in the information provided to the department;

25 (B) current information indicating that the mortgage loan
26 originator continues to meet the minimum standards for license issuance;

27 (C) certificates or other documents showing the mortgage loan
28 originator has satisfied the annual continuing education requirements of
29 AS 06.60.160; and

30 (D) the fund fee required by AS 06.60.550; and

31 (5) payment of any other required fees for renewal of the license.

1 (b) The department may adopt by regulation procedures and deadlines
2 regarding the filing of an application for renewal of a license and the assessment of a
3 penalty or other consequence for late filing, consistent with the requirements of the
4 registry.

5 * Sec. 21. AS 06.60 is amended by adding a new section to read:

6 **Sec. 06.60.087. Standards for license renewal.** (a) After a licensee complies
7 with AS 06.60.085, the department may renew the licensee's license if

8 (1) the licensee continues to meet the standards for license issuance
9 under AS 06.60.060;

10 (2) in the case of a mortgage loan originator license, the mortgage loan
11 originator licensee has satisfied the annual continuing education requirements of
12 AS 06.60.160;

13 (3) the licensee has paid all required fees for renewal of the license;
14 and

15 (4) the licensee is in compliance with the requirements of this chapter
16 and regulations adopted and orders issued under this chapter.

17 (b) If a licensee fails to satisfy (a) of this section, the license expires at the end
18 of the period for which the license was issued. The department may adopt by
19 regulation procedures for the reinstatement of expired licenses. The procedures must
20 be consistent with the standards established by the registry.

21 * Sec. 22. AS 06.60.090(c) is amended to read:

22 (c) For a license to become inactive, a licensee shall provide the department
23 with a written request that the license become inactive [AND RETURN THE
24 LICENSE CERTIFICATE TO THE DEPARTMENT]. The request must include the
25 licensee's name **and** [,] address [,] and other information [THAT] the department
26 requires to process the request. **If the request is made by mortgage licensee, the**
27 **request must include** [AND] a statement by the **mortgage** licensee that all mortgage
28 loans of the **mortgage** licensee have been paid in full or sold.

29 * Sec. 23. AS 06.60.090(e) is amended to read:

30 (e) If a person holds a license that becomes inactive under this section, the
31 person may not operate as a mortgage lender, mortgage broker, or **mortgage loan**

1 originator under the license in this state until the license is reactivated.

2 * **Sec. 24.** AS 06.60.090(f) is amended to read:

3 (f) If a license becomes inactive under this section, the license remains
4 inactive until the license expires, the person surrenders the license, or the **department**
5 **approves the reactivation of the license, whichever event occurs first** [PERSON
6 WHO HOLDS THE INACTIVE LICENSE PROVIDES THE DEPARTMENT WITH
7 A WRITTEN REQUEST THAT THE LICENSE BE REACTIVATED]. The
8 **licensee's request for reactivation** must include the information that the department
9 requires to process the request.

10 * **Sec. 25.** AS 06.60.090(g) is repealed and reenacted to read:

11 (g) While a license is inactive under this section, the person holding the
12 inactive license shall

13 (1) pay the annual license fee as required by AS 06.60.035;

14 (2) inform the department of any change that occurs in the name and
15 address of the person, the location of the person's business, or the business operations
16 or control of the person;

17 (3) maintain the bond required by AS 06.60.045; and

18 (4) file the annual report required by AS 06.60.100(a).

19 * **Sec. 26.** AS 06.60.095 is repealed and reenacted to read:

20 **Sec. 06.60.095. Reactivation of inactive license.** (a) A person who has an
21 inactive license certificate under AS 06.60.090 may apply to the department for an
22 active license and pay the required fees. To be eligible for license reactivation, the
23 applicant shall comply with all requirements for licensure in effect at the time of
24 reactivation.

25 (b) If the department reactivates a license under this section, the license
26 expires on December 31 of the year in which it is issued.

27 * **Sec. 27.** AS 06.60.100(a) is amended to read:

28 (a) **Annually, on** [ON] or before **a** [MARCH 15, OR ON ANOTHER] date
29 established by the department by regulation, [OF EACH YEAR] a mortgage licensee
30 shall file a report with the department **providing** [GIVING] relevant information that
31 the department requires concerning the business and operations of [EACH

1 LOCATION IN THIS STATE WHERE] the mortgage licensee [CONDUCTS
2 BUSINESS IN THIS STATE DURING THE PRECEDING CALENDAR YEAR].

3 The mortgage licensee shall make the report under oath or on affirmation. The content
4 and form of the report shall be established by the department by regulation.

5 * Sec. 28. AS 06.60.100 is amended by adding a new subsection to read:

6 (c) A mortgage licensee shall submit to the registry, as required by the
7 registry, reports of the condition of the licensee, which must be in the form and
8 contain the information that the registry may require.

9 * Sec. 29. AS 06.60 is amended by adding a new section to read:

Change — 10 **Sec. 06.60.112. Branch office application.** A mortgage licensee shall submit
11 an application to register a branch office to the department through the registry. The
12 department may adopt by regulation procedures and fees for the submission of an
13 application to register a branch office, consistent with the requirements of the registry.
14 The department may adopt by regulation fees and other requirements for renewal of a
15 branch office registration that are consistent with the requirements of the registry.

16 * Sec. 30. AS 06.60.130(a) is amended to read:

17 (a) The prior [WRITTEN] approval of the department is required for the
18 continued operation of a mortgage licensee's business when a change in control of the
19 mortgage licensee is proposed. The department may require the information it
20 considers necessary to determine whether a new application is required. The mortgage
21 licensee requesting approval of the change in control shall pay all reasonable expenses
22 incurred by the department to investigate and approve or deny the change in control.
23 The department may establish by regulation the fees and other requirements for
24 requesting approval of a change in control that are consistent with the
25 requirements of the registry.

26 * Sec. 31. AS 06.60.140 is amended to read:

27 **Sec. 06.60.140. Availability of out-of-state records.** A mortgage licensee
28 who operates an office or other place of business outside this state shall, at the request
29 of the department,

30 (1) make the records of the office or place of business available to the
31 department at a location within this state; or

1 (2) reimburse the department its reasonable costs, as provided in
 2 AS 06.60.250(k) [AS 06.60.250(f)], that are incurred by the department in conjunction
 3 with an investigation or examination conducted at the office or place of business.

4 * Sec. 32. AS 06.60.155 is amended to read:

5 **Sec. 06.60.155. Restriction on mortgage loan originator licensee's**
 6 **[LICENSEE] work. A mortgage loan [AN] originator licensee may only work as a**
 7 **mortgage loan [AN] originator licensee under contract for, or as an employee of, one**
 8 **mortgage licensee.**

9 * Sec. 33. AS 06.60.157 is amended to read:

10 **Sec. 06.60.157. Restrictions [MORTGAGE LICENSEE RESTRICTIONS]**
 11 **on mortgage licensee's performance of mortgage loan originator activities. A**
 12 **mortgage licensee may not perform mortgage loan originator activities except**
 13 **through a licensed mortgage loan originator who is an employee of or under**
 14 **exclusive contract with a mortgage licensee.**

15 * Sec. 34. AS 06.60.159 is amended to read:

16 **Sec. 06.60.159. Mortgage licensee's [LICENSEE] employment of, contract**
 17 **with, and liability for mortgage loan originator. (a) A mortgage licensee may not**
 18 **employ or enter into a contract with a person who acts as a mortgage loan [AN]**
 19 **originator for the mortgage licensee unless the person has a mortgage loan [AN]**
 20 **originator license.**

21 (b) A mortgage licensee is liable for the conduct of a person acting as a
 22 mortgage loan [AN] originator if the mortgage licensee knows or should have known
 23 that the person's conduct violates this chapter and the person is employed by or is
 24 under contract with the mortgage licensee to act as a mortgage loan [AN] originator.

25 * Sec. 35. AS 06.60.160 is repealed and reenacted to read:

change
 26 ————— **Sec. 06.60.160. Continuing education requirements for mortgage loan**
 27 **originators. (a) Each calendar year, a licensed mortgage loan originator shall**
 28 **complete at least eight hours of education approved under (b) of this section. At a**
 29 **minimum, these hours must include**

30 (1) three hours of instruction in federal statutes and regulations;

31 (2) two hours of instruction in ethics, including instruction on issues

1 related to fraud prevention, consumer protection, and fair lending; and

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

4 (b) For the purposes of (a) of this section, a continuing education course and
5 the course provider must be approved by the department.

6 (c) Nothing in this section precludes a continuing education course that is
7 approved by the department and that is provided by the employer of the applicant, an
8 entity affiliated with the applicant, or a subsidiary or affiliate of an employer or entity
9 affiliated with the applicant.

10 (d) Continuing education may be offered in a classroom, on-line, or by other
11 means approved by the department.

12 (e) A licensed mortgage loan originator

13 (1) except as provided by (i) of this section, may only receive credit for
14 a continuing education course in the calendar year in which the course is taken; and

15 (2) may not retake an approved course in the same or successive
16 calendar years if the mortgage loan originator has previously taken the course to meet
17 the annual requirements for continuing education.

18 (f) A licensed mortgage loan originator who is an approved instructor of an
19 approved continuing education course may receive credit for the licensed mortgage
20 loan originator's own annual continuing education requirement at the rate of two hours
21 of credit for each one hour taught.

22 (g) Successful completion of a continuing education course approved for
23 another state by the registry shall be accepted as credit toward completion of
24 continuing education requirements in this state.

25 (h) Before a new or renewed license may be issued to a licensed mortgage
26 loan originator who has become unlicensed, the mortgage loan originator shall
27 complete the continuing education requirements for the last calendar year in which the
28 mortgage loan originator's license was valid.

29 (i) A person meeting the requirements of AS 06.60.087, other than the
30 continuing education requirement of AS 06.60.087(a)(2), may make up a deficiency in
31 continuing education in a manner established by regulation.

1 * **Sec. 36.** AS 06.60.200 is repealed and reenacted to read:

2 **Sec. 06.60.200. Disciplinary action.** (a) In addition to other disciplinary action
3 allowed under this chapter or under AS 06.01, the department may deny, suspend,
4 revoke, condition, or decline to renew a license or take other disciplinary action
5 against a person subject to this chapter, including action under a regulation adopted
6 under this chapter, if the department finds that the person

7 (1) fails to comply with an applicable provision of this title, an
8 applicable regulation adopted under this title, a lawful demand, ruling, order, or
9 requirement of the department, or other state or federal statute or regulation applicable
10 to the conduct of the licensee's business;

11 (2) fails to meet the minimum standards for issuance or renewal of a
12 license; or

13 (3) knowingly withholds material information or negligently makes a
14 material misstatement in an application for or renewal of a license.

15 (b) The department may

16 (1) order a person subject to this chapter to cease and desist from
17 conducting business, including an immediate temporary order to cease and desist;

18 (2) order a person subject to this chapter to cease and desist from
19 violating this chapter, including an immediate temporary order to cease and desist;

20 (3) impose a fine on a person subject to this chapter under
21 AS 06.60.420;

22 (4) issue an order of rescission, restitution, or disgorgement directed to
23 a person subject to this chapter for a violation of this chapter;

24 (5) order other affirmative action that the department considers
25 necessary, including an accounting, an asset freeze, or the appointment of a receiver.

26 (c) A disciplinary action under this section may be taken by itself or in
27 conjunction with one or more other disciplinary actions under this chapter or under
28 AS 06.01.

29 * **Sec. 37.** AS 06.60.210 is amended to read:

30 **Sec. 06.60.210. Suspension, Suspension, [OR] revocation, or renewal related to fund.**

31 (a) When an award is made from the fund, the department may suspend, [OR] revoke,

1 or decline to renew the license of the mortgage loan originator licensee whose
2 actions formed the basis of the award.

3 (b) The department shall lift a suspension made under (a) of this section if the
4 mortgage loan originator licensee reaches an agreement with the department on terms
5 and conditions for the repayment to the fund of the money awarded to the claimant
6 and the costs of hearing the fund claim. The department may reimpose the suspension
7 if the mortgage loan originator licensee violates the terms of a repayment agreement
8 entered into under this subsection.

9 * **Sec. 38.** AS 06.60.230 is amended to read:

10 **Sec. 06.60.230. Divestment.** If the department revokes a mortgage license [OR
11 A REGISTRATION OF A SMALL MORTGAGE LENDER], the mortgage licensee
12 [OR THE SMALL MORTGAGE LENDER] shall divest itself of all outstanding loans
13 that were issued under this chapter by selling or assigning them to another mortgage
14 licensee [OR SMALL MORTGAGE LENDER]. Divestment under this section must
15 be approved by the department.

16 * **Sec. 39.** AS 06.60.240 is amended to read:

17 **Sec. 06.60.240. Reinstatement.** The department may reinstate a suspended
18 [REVOKED] license [OR REGISTRATION UNDER AS 06.60.017] if the licensee
19 [OR SMALL MORTGAGE LENDER] complies with this chapter or with a demand,
20 ruling, or requirement made by the department under this chapter. Before
21 reinstatement of a license [OR REGISTRATION UNDER AS 06.60.017], the licensee
22 [OR SMALL MORTGAGE LENDER] shall pay any fees, restitution, and civil
23 penalties owing under this chapter.

24 * **Sec. 40.** AS 06.60.250 is repealed and reenacted to read:

25 **Sec. 06.60.250. Investigation and examination authority.** (a) For the purpose
26 of initial licensing, license renewal, license suspension, license conditioning, license
27 revocation, license termination, or general or specific inquiry or investigation to
28 determine compliance with this chapter, the department may access, receive, use, and
29 copy any books, accounts, records, files, documents, information, or evidence,
30 including

31 (1) criminal, civil, and administrative history information, including

1 nonconviction information; in this paragraph, "nonconviction information" has the
2 meaning given in AS 12.62.900;

3 (2) personal history and experience information, including independent
4 credit reports obtained from a consumer reporting agency; and

5 (3) other documents, information, and evidence the department
6 considers relevant to the inquiry or investigation, regardless of the location,
7 possession, or custody of the documents, information, or evidence.

8 (b) Notwithstanding AS 06.01.015, for the purpose of investigating violations
9 or complaints arising under this chapter, or for the purpose of examination, the
10 department may review, investigate, or examine an applicant, licensee, or another
11 person subject to this chapter as often as necessary to carry out the purposes of this
12 chapter. The department may conduct an examination without prior notice to the
13 licensee.

14 (c) A licensee or other person subject to this chapter shall make available to
15 the department, on request, the place of business, books, records, accounts, safes, and
16 vaults relating to the operations of the licensee or other person subject to this chapter.
17 The department may interview the officers, principals, mortgage loan originators,
18 employees, independent contractors, agents, and customers of the licensee or other
19 person subject to this chapter concerning the licensee's or other person's business.

20 (d) For the purpose of hearings, investigations, or other proceedings under this
21 chapter, the department or an officer designated by the department may administer
22 oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take
23 evidence, and require the production of books, papers, correspondence, memoranda,
24 agreements, or other documents or records that the department considers relevant or
25 material to the matter.

26 (e) If a person refuses to comply with a subpoena, the superior court, on
27 application by the department, may issue to the person an order requiring the person to
28 appear before the department to produce documentary evidence or to give evidence
29 regarding the matter under investigation or in question.

30 (f) A licensee or other person subject to this chapter shall make or compile
31 reports or prepare other information as directed by the department to carry out the

1 purposes of this section, including

- 2 (1) accounting compilations;
 3 (2) information lists and data concerning loan transactions in a format
 4 prescribed by the department; and
 5 (3) other information considered necessary to carry out the purposes of
 6 this section.

7 (g) In making an examination or investigation authorized by this chapter, the
 8 department may control access to documents and records of the licensee or other
 9 person under examination or investigation. The department may take possession of the
 10 documents and records or place a person in exclusive charge of the documents and
 11 records in the place where they are usually kept. During the period of control, a person
 12 may not remove or attempt to remove any of the documents and records except under
 13 a court order or with the consent of the department. In this subsection, "control" does
 14 not have the meaning given in AS 06.60.990.

15 (h) To carry out the purposes of this section, the department may

16 (1) retain attorneys, accountants, or other professionals and specialists,
 17 including examiners, auditors, or investigators, to conduct or assist in the conduct of
 18 examinations or investigations;

19 (2) enter into agreements or relationships with other government
 20 officials or regulatory associations to improve efficiency and reduce the regulatory
 21 burden by sharing resources, standardized or uniform methods or procedures, and
 22 documents, records, information, and evidence obtained under this section;

23 (3) use, hire, contract, or employ public or privately available
 24 analytical systems, methods, or electronic software to examine or investigate the
 25 licensee, individual, or other person subject to this chapter;

26 (4) accept and rely on examination or investigation reports made by
 27 other government officials in this or another state;

28 (5) share information received or collected during an examination,
 29 investigation, or other proceeding with other law enforcement agencies; or

30 (6) accept an audit report prepared by an independent certified public
 31 accountant for the licensee or other person subject to this chapter and may incorporate

1 an audit report in the report of the examination or other writing of the department.

2 (i) The authority under this section remains in effect, whether or not a licensee
3 or other person subject to this chapter acts or claims to act under a licensing or
4 registration law of the state or claims to act without the authority of a licensing or
5 registration law of the state.

6 (j) A licensee or other person subject to investigation or examination under
7 this section may not knowingly withhold, abstract, remove, mutilate, destroy, or
8 secrete any books, records, computer records, or other information.

9 (k) A person shall reimburse the department for reasonable costs incurred by
10 the department to conduct an examination or investigation under this section. The
11 reimbursement under this subsection may not exceed the rate of \$75 an hour for the
12 examination or investigation, plus travel costs, including a per diem allowance that
13 does not exceed the per diem allowance for employees of the state under
14 AS 39.20.110.

15 * **Sec. 41.** AS 06.60.260 is amended to read:

16 **Sec. 06.60.260. Revocation, removal, or suspension of mortgage loan**
17 **originator licensee.** If the department finds that **a mortgage loan [AN]** originator
18 licensee is dishonest, reckless, or incompetent when operating as **a mortgage loan**
19 **[AN]** originator or fails to comply with applicable law, with regulations or orders of
20 the department, or with written requirements or instructions of the department relating
21 to the **mortgage loan** originator license, the department may revoke or suspend the
22 **mortgage loan** originator license, remove the **mortgage loan** originator licensee from
23 operating as **a mortgage loan [AN]** originator in the state, or order a person licensed
24 under this title to remove the **mortgage loan** originator licensee from operating as **a**
25 **mortgage loan [AN]** originator for the person.

26 * **Sec. 42.** AS 06.60.270 is amended to read:

27 **Sec. 06.60.270. Removal by entity.** A mortgage licensee shall remove **a**
28 **mortgage loan [AN]** originator licensee from acting as **a mortgage loan [AN]**
29 originator for the mortgage licensee if the department directs the mortgage licensee to
30 remove the **mortgage loan** originator licensee under AS 06.60.260.

31 * **Sec. 43.** AS 06.60 is amended by adding a new section to article 4 to read:

1 **Sec. 06.60.290. Report to the registry.** Notwithstanding AS 06.01.025, the
 2 department shall regularly report violations of this chapter, as well as enforcement
 3 actions and other relevant information, to the registry, subject to provisions established
 4 by the department by regulation.

5 * **Sec. 44.** AS 06.60.320 is amended to read:

6 **Sec. 06.60.320. False, misleading, or deceptive advertising prohibited.** A
 7 person [, INCLUDING A SMALL MORTGAGE LENDER,] may not advertise, print,
 8 display, publish, distribute, broadcast, or cause or permit to be advertised, printed,
 9 displayed, published, distributed, or broadcast, in any manner a statement or
 10 representation with regard to the rates, terms, or conditions for a mortgage loan that is
 11 false, misleading, or deceptive.

12 * **Sec. 45.** AS 06.60 is amended by adding a new section to read:

13 **Sec. 06.60.325. Display of unique identifier.** A person operating as a
 14 mortgage lender, mortgage broker, or mortgage loan originator shall clearly display
 15 the unique identifier assigned to the person by the registry on all residential mortgage
 16 loan application forms, solicitations, and advertisements, including business cards or
 17 websites, and any other documents as established by regulation or order of the
 18 department.

19 * **Sec. 46.** AS 06.60.330 is amended to read:

20 **Sec. 06.60.330. Compliance with federal requirements.** A person [,
 21 INCLUDING A SMALL MORTGAGE LENDER,] subject to this chapter shall
 22 conduct the person's mortgage loan activities in compliance with [12 CFR PART 226
 23 AND OTHER REGULATIONS ADOPTED BY THE FEDERAL GOVERNMENT
 24 UNDER]

25 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of
 26 1974);

27 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

28 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

29 (4) 12 U.S.C. 5101 - 5116 (Secure and Fair Enforcement for
 30 Mortgage Licensing Act of 2008);

31 (5) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit

1 Protection Act);

2 (6) [(5)] 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968);

3 (7) [(6)] any other federal statute the purpose of which is to regulate
4 residential mortgage lending; and

5 (8) regulations adopted under the statutes identified in (1) - (7) of
6 this section [LAW OR REGULATION].

7 * Sec. 47. AS 06.60.340 is repealed and reenacted to read:

8 **Sec. 06.60.340. Prohibited activities.** In addition to activities prohibited
9 elsewhere in this chapter or by other law, a person who is a licensee, a person who is
10 required to be licensed under this chapter, and a person who is licensed under
11 AS 06.20 may not, in connection with a mortgage loan transaction,

12 (1) misrepresent or conceal a material fact or make a false promise
13 likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower
14 to enter into a mortgage loan transaction;

15 (2) pursue a course of misrepresentation through an agent;

16 (3) directly or indirectly employ any scheme, device, or artifice to
17 defraud or mislead a borrower or lender or to defraud a person;

18 (4) engage in any unfair or deceptive act or practice toward any
19 person;

20 (5) obtain property by fraud or misrepresentation;

21 (6) solicit or enter into a contract with a borrower that provides, in
22 substance, that the person subject to this chapter may earn a fee or commission
23 through using the person's best efforts to obtain a loan, even though a loan is not
24 actually obtained for the borrower;

25 (7) solicit, advertise, or enter into a contract for specific interest rates,
26 points, or other financing terms unless the terms are actually available at the time of
27 soliciting, advertising, or contracting;

28 (8) conduct a business covered by this chapter without holding a valid
29 license as required under this chapter, or assist a person in the conduct of business
30 under this chapter without a valid license as required under this chapter;

31 (9) fail to make disclosures as required by this chapter or by another

1 applicable state or federal statute, including regulations adopted under the statute;

2 (10) fail to comply with this chapter or regulations adopted under this
3 chapter or fail to comply with another state or federal statute, including regulations
4 adopted under the statute, applicable to a business authorized or conducted under this
5 chapter;

6 (11) make, in any manner, false or deceptive statements or
7 representations, including statements or representations about rates, points, or other
8 financing terms or conditions, or engage in bait and switch advertising;

9 (12) negligently make a false statement or knowingly omit a material
10 fact in connection with information or reports filed with the department or the registry
11 or in connection with an investigation conducted by the department;

12 (13) make a payment, threat, or promise, directly or indirectly, to a
13 person for the purposes of influencing the independent judgment of the person in
14 connection with a mortgage loan, or make a payment, threat, or promise, directly or
15 indirectly, to an appraiser of a property, for the purpose of influencing the independent
16 judgment of the appraiser with respect to the value of the property;

17 (14) collect, charge, attempt to collect, attempt to charge, or use or
18 propose an agreement purporting to collect or charge a fee prohibited by this chapter;

19 (15) cause or require a borrower to obtain property insurance coverage
20 in an amount that exceeds the replacement cost, as established by the property insurer,
21 of the improvements;

22 (16) improperly refuse to issue a satisfaction of a mortgage loan;

23 (17) fail to account for or deliver to a person money, a document, or
24 another thing of value obtained in connection with a mortgage loan, including money
25 provided for a real estate appraisal or a credit report, if the person is not entitled to
26 retain the money under the circumstances;

27 (18) pay, receive, or collect, in whole or in part, a commission, fee, or
28 other compensation for brokering a mortgage loan in violation of this chapter,
29 including a mortgage loan brokered by an unlicensed person;

30 (19) fail to disburse money in accordance with a written commitment
31 or agreement to make a mortgage loan;

1 (20) engage in a transaction, practice, or course of business that is not
 2 engaged in by the person in good faith or fair dealing or that constitutes a fraud on a
 3 person in connection with the brokering, making, purchase, or sale of a mortgage loan;

4 (21) influence or attempt to influence, through coercion, extortion, or
 5 bribery, the development, reporting, result, or review of a real estate appraisal sought
 6 in connection with a mortgage loan; this paragraph does not prohibit a person from
 7 asking an appraiser to

8 (A) consider additional appropriate property information;

9 (B) provide further detail, substantiation, or explanation for the
 10 appraiser's value determination; or

11 (C) correct errors in the appraisal report;

12 (22) make a false or misleading statement in a mortgage loan
 13 commitment or prequalification letter, or omit material information necessary to make
 14 the statements made not misleading, if the person knew or reasonably should have
 15 known the statement was false or misleading or the omission consisted of material
 16 information necessary to make the statements made not misleading;

17 (23) engage in a practice or course of business in which the ultimate
 18 rates, terms, or costs of mortgage loans are materially worse for the borrower than
 19 they are represented to be in the first good faith estimates the person provides to the
 20 borrower, unless

21 (A) the person's generally published or advertised rates, terms,
 22 or costs, if any, change for a borrower's loan program; or

23 (B) new or changed information from the borrower makes it
 24 necessary to change the loan program offered to the borrower;

25 (24) represent that the person has a license, registration, title,
 26 certification, sponsorship, approval, status, affiliation, or connection that the person
 27 does not have;

28 (25) engage in unfair, deceptive, or fraudulent advertising; or

29 (26) authorize, direct, plan, or aid in the publishing, distribution, or
 30 circulation of a materially false statement or a material misrepresentation concerning
 31 the licensee's business or concerning mortgage loans originated in the course of the

1 licensee's business in this or another state.

2 * Sec. 48. AS 06.60.360 is amended by adding a new subsection to read:

3 (f) In this section, "escrow account" means an account

4 (1) to which a borrower makes payments for obligations related to the
5 real property that is the subject of a residential mortgage loan of the borrower;

6 (2) held by a third person; and

7 (3) from which the third person identified in (2) of this subsection
8 disburses money in accordance with a written agreement to pay obligations related to
9 the real property that is the subject of a residential mortgage loan of the borrower.

10 * Sec. 49. AS 06.60.370 is amended to read:

11 **Sec. 06.60.370. Criminal penalties [LIABILITY OF LICENSEE OR**
12 **SMALL MORTGAGE LENDER].** (a) The department may report **a violation**
13 **[VIOLATIONS]** of (b) - (e) of this section to the attorney general, who may institute
14 the proper proceedings to enforce the criminal penalties provided in (b) - (e) of this
15 section.

16 (b) A person [, INCLUDING A SMALL MORTGAGE LENDER,] who
17 knowingly provides false or misleading information to the department that is material
18 under this chapter is guilty of a class A misdemeanor.

19 (c) A [LICENSEE, PERSON WHO IS A SMALL MORTGAGE LENDER,
20 OR] person [WHO IS EXEMPT UNDER AS 06.60.015] who knowingly fails to
21 account for or deliver to a person money, deposits, or checks or other forms of
22 negotiable instruments in violation of the provisions of this chapter is guilty of a class
23 A misdemeanor.

24 (d) A licensee [OR A SMALL MORTGAGE LENDER] who knowingly fails
25 to disburse money belonging to the borrower without just cause is guilty of a class A
26 misdemeanor.

27 (e) **Unless the person is exempt from licensing under this chapter, a**
28 **person** [A MORTGAGE LENDER, MORTGAGE BROKER, OR ORIGINATOR]
29 who knowingly operates **in this state as a mortgage lender, mortgage broker, or**
30 **mortgage loan originator** without a license **issued under this chapter** [OR
31 WITHOUT BEING REGISTERED UNDER AS 06.60.017 AND IS NOT EXEMPT

1 UNDER AS 06.60.015] is guilty of a class A misdemeanor.

2 * **Sec. 50.** AS 06.60.400 is repealed and reenacted to read:

3 **Sec. 06.60.400. Cease and desist proceedings.** (a) Notwithstanding
4 AS 06.01.030(d) and (e), if the department finds, after notice and opportunity for a
5 hearing, that a person has violated, is violating, or is about to violate any provision of
6 this chapter, a regulation adopted under this chapter, or an order issued under this
7 chapter, the department may publish findings and enter an order requiring the person
8 to cease and desist from committing or causing the violation and any future violation
9 of the same provision or regulation. An order may, in addition to requiring a person to
10 cease and desist from committing or causing a violation, require the person to comply,
11 or to take steps to effect compliance, with a provision or regulation, on terms and
12 conditions and within a time, as the department may specify in the order. An order
13 may require future compliance or steps to result in future compliance, either
14 permanently or for a period of time, as the department may specify.

15 (b) Notwithstanding AS 06.01.030(d) and (e), if the department determines
16 that the alleged violation or threatened violation is likely to result in significant
17 dissipation or conversion of assets, significant harm to consumers, or substantial harm
18 to the public interest before the completion of cease and desist proceedings, the
19 department may enter a temporary order requiring the respondent to cease and desist
20 from the violation or threatened violation and to take action to prevent the violation or
21 threatened violation and to prevent dissipation or conversion of assets, significant
22 harm to consumers, or substantial harm to the public interest as the department
23 determines appropriate pending completion of the proceedings. A temporary order
24 may be entered only after notice and opportunity for a hearing, unless the department
25 determines that notice and hearing before entry would be impracticable or contrary to
26 the public interest. A temporary order becomes effective on service on the respondent
27 and, unless set aside, limited, or suspended by the department or a court of competent
28 jurisdiction, remains effective and enforceable pending the completion of the cease
29 and desist proceedings.

30 * **Sec. 51.** AS 06.60 is amended by adding a new section to read:

31 **Sec. 06.60.405. Review of temporary cease and desist orders.** (a) At any

1 time after the respondent has been served with a temporary cease and desist order
 2 under AS 06.60.400(b), the respondent may apply to the department to have the order
 3 set aside, limited, or suspended. If the respondent has been served with a temporary
 4 cease and desist order entered without a prior hearing, the respondent may, within 10
 5 days after the date on which the order was served, request a hearing on the application,
 6 and the office of administrative hearings shall hold a hearing and render a decision on
 7 the application under AS 44.64.060. A respondent served with a temporary cease and
 8 desist order entered without a prior hearing may not apply to the court except after
 9 hearing and decision by the department on the respondent's application under this
 10 subsection.

11 (b) The commencement of proceedings under this section does not, unless
 12 specifically ordered by the court, operate as a stay of the department's order.

13 (c) In a cease and desist proceeding under this section, the department may
 14 issue an order to prohibit, conditionally or unconditionally, permanently or for a
 15 period of time the department determines, a person who has violated this chapter from
 16 operating as a mortgage lender, mortgage broker, or mortgage loan originator if the
 17 conduct of that person demonstrates unfitness to operate as a mortgage lender,
 18 mortgage broker, or mortgage loan originator.

19 * **Sec. 52.** AS 06.60.410 is amended to read:

20 **Sec. 06.60.410. Censure, suspension, or bar.** (a) In addition to any other
 21 remedy provided under this chapter, the department may, by order after appropriate
 22 notice and opportunity for a hearing, censure a person, suspend the license of a person
 23 for a period not to exceed 12 months, [SUSPEND THE REGISTRATION OF A
 24 SMALL MORTGAGE LENDER FOR A PERIOD NOT TO EXCEED 12
 25 MONTHS,] or bar a person from a position of employment, management, or control
 26 of a licensee [OR A SMALL MORTGAGE LENDER] if the department finds that

27 (1) the censure, suspension, or bar is in the public interest;

28 (2) the person has knowingly committed or caused a violation of this
 29 chapter or a regulation adopted under this chapter; and

30 (3) the violation has caused material damage to the licensee [, TO THE
 31 SMALL MORTGAGE LENDER,] or to the public.

1 (b) When a person who is the subject of a proposed order under this section
 2 receives a notice of the department's intention to issue an order under this section, the
 3 person is immediately prohibited from engaging in any activities for which a license
 4 [OR REGISTRATION AS A SMALL MORTGAGE LENDER] is required under this
 5 chapter.

6 (c) A person who is suspended or barred under this section is prohibited from
 7 participating in a business activity of a licensee [OR A SMALL MORTGAGE
 8 LENDER] and from engaging in a business activity on the premises where a licensee
 9 [OR SMALL MORTGAGE LENDER] is conducting the licensee's [OR SMALL
 10 MORTGAGE LENDER'S] business. This subsection may not be construed to prohibit
 11 a suspended or barred person from having the person's personal transactions processed
 12 by a licensee [OR A SMALL MORTGAGE LENDER].

13 * **Sec. 53.** AS 06.60.420 is amended to read:

14 **Sec. 06.60.420. Civil penalty for violations.** (a) Notwithstanding
 15 AS 06.01.035, a [A] person [, INCLUDING A SMALL MORTGAGE LENDER,]
 16 who violates a provision of this chapter, or a regulation adopted or an order issued
 17 under this chapter, is liable for a civil penalty not to exceed \$10,000 for each violation.

18 (b) The remedies provided by this section and by other sections of this chapter
 19 are not exclusive and may be sought [APPLIED] in combination with other remedies
 20 to enforce the provisions of this chapter.

21 * **Sec. 54.** AS 06.60.430(a) is amended to read:

22 (a) The department may treat a licensee [OR A SMALL MORTGAGE
 23 LENDER] as a financial institution under AS 06.01 when applying the enforcement
 24 provisions of AS 06.01.

25 * **Sec. 55.** AS 06.60.430(c) is amended to read:

26 (c) If the department determines that a licensee [, A SMALL MORTGAGE
 27 LENDER,] or a person acting on behalf of the licensee [OR SMALL MORTGAGE
 28 LENDER] is in violation of, or has violated, a provision of this chapter, the
 29 department may refer the information to the attorney general and request that the
 30 attorney general investigate the violation under AS 45.50.495. The attorney general
 31 may enjoin a violation of this chapter and may seek restitution, rescission, and other

1 relief as allowed by law.

2 * **Sec. 56.** AS 06.60.500 is amended to read:

3 **Sec. 06.60.500. Mortgage loan originator [ORIGINATOR] surety fund.**

4 The mortgage loan originator surety fund is established as a separate account in the
5 general fund. The purpose of the fund is to pay fund claims against mortgage loan
6 originator licensees.

7 * **Sec. 57.** AS 06.60.510 is amended to read:

8 **Sec. 06.60.510. Composition of fund.** The fund consists of appropriations of
9 payments made by mortgage loan originator licensees under AS 06.60.550, filing fees
10 for fund claims retained under AS 06.60.620, income earned on the investment of the
11 money in the fund, and money deposited in the fund by the department under
12 AS 06.60.740.

13 * **Sec. 58.** AS 06.60.550(a) is amended to read:

14 (a) A person who applies for or renews a mortgage loan [AN] originator
15 license shall pay to the department, in addition to the fees required by AS 06.60.035, a
16 fund fee established by the department [NOT TO EXCEED \$150].

17 * **Sec. 59.** AS 06.60.550(d) is amended to read:

18 (d) Notwithstanding (a) of this section, a mortgage loan [AN] originator
19 licensee who obtains an initial a mortgage loan originator license when the
20 department has reduced the fund fee to nothing shall nonetheless pay the [A] fund fee
21 established by regulation [OF \$150] to the department for the first year of the
22 mortgage loan originator license [OR, FOR A MORTGAGE LICENSEE, OF
23 OPERATING AS AN ORIGINATOR].

24 * **Sec. 60.** AS 06.60.560 is amended to read:

25 **Sec. 06.60.560. Claim for reimbursement.** In addition to any other remedies
26 available to the person, a person may seek reimbursement for a loss suffered in a
27 mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the
28 wrongful conversion of money by a mortgage loan [AN] originator licensee and is
29 eligible to be reimbursed under AS 06.60.500 - 06.60.750 for the loss from money
30 appropriated for that purpose.

31 * **Sec. 61.** AS 06.60.580 is amended to read:

1 **Sec. 06.60.580. Form and contents of fund claim.** The form for a fund claim
2 shall be executed under penalty of unsworn falsification in the second degree and
3 must include

- 4 (1) the name and address of each mortgage loan originator licensee
5 involved;
- 6 (2) the amount of the alleged loss;
- 7 (3) the date or period of time during which the alleged loss occurred;
- 8 (4) the date when the alleged loss was discovered;
- 9 (5) the name and address of the claimant; and
- 10 (6) a general statement of the facts related to the fund claim.

11 * **Sec. 62.** AS 06.60.600 is amended to read:

12 **Sec. 06.60.600. Filing and distribution of claim.** At least 20 days before a
13 hearing is held on the fund claim by the office of administrative hearings
14 (AS 44.64.010), the department shall send a copy of the claim filed with the
15 department to

- 16 (1) each mortgage loan originator licensee alleged to have committed
17 the misconduct resulting in the alleged loss;
- 18 (2) the employer of the mortgage loan originator licensee described in
19 (1) of this section; and
- 20 (3) any other parties involved in the mortgage loan transaction that is
21 the subject of the fund claim.

22 * **Sec. 63.** AS 06.60.610(a) is amended to read:

23 (a) Within 30 [SEVEN] days after receiving a copy of a fund claim under
24 AS 06.60.600, a mortgage loan [EACH] originator licensee against whom a [THE]
25 claim is made may elect to defend the fund claim as a small claims action in district
26 court under District Court Rules of Civil Procedure if the claim does not exceed the
27 small claims jurisdictional limit.

28 * **Sec. 64.** AS 06.60.610(b) is amended to read:

29 (b) A mortgage loan [AN] originator licensee who elects under (a) of this
30 section to defend a fund claim in district court under the small claims rules may not
31 revoke the election without the consent of the person who filed the fund claim.

1 * **Sec. 65.** AS 06.60.640 is amended to read:

2 **Sec. 06.60.640. Defense of claim.** When the department receives a fund claim,
3 the department shall allow each mortgage loan originator licensee against whom the
4 claim is made an opportunity to file with the department, within seven days after
5 receipt of notification of the fund claim under AS 06.60.600, a written statement in
6 opposition to the fund claim and a request for a hearing.

7 * **Sec. 66.** AS 06.60.650 is amended to read:

8 **Sec. 06.60.650. Standard of proof.** A person who submits a fund claim under
9 AS 06.60.570 bears the burden of establishing by a preponderance of the evidence that
10 the person suffered a loss in a mortgage loan transaction as a result of fraud,
11 misrepresentation, deceit, or the conversion of trust funds by a mortgage loan [AN]
12 originator licensee and the extent of those losses.

13 * **Sec. 67.** AS 06.60.680(b) is amended to read:

14 (b) If the department determines that the claimant has suffered a loss in a
15 mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the
16 wrongful conversion of money by a mortgage loan [AN] originator licensee, the
17 department may award the person who filed the fund claim reimbursement from
18 money appropriated to the fund.

19 * **Sec. 68.** AS 06.60.690 is amended to read:

20 **Sec. 06.60.690. Fund operations.** The department shall deposit into the fund
21 money that the department recovers from a mortgage loan [AN] originator licensee
22 under AS 06.60.745. The department may not consider amounts paid from the fund for
23 hearing or legal expenses when determining the maximum reimbursement to be
24 awarded under AS 06.60.710 or the maximum liability for fund claims under
25 AS 06.60.710.

26 * **Sec. 69.** AS 06.60.700(a) is amended to read:

27 (a) If a fund claim dismissed under AS 06.60.610 results in a monetary award
28 against a mortgage loan [AN] originator licensee, the department may pay, subject to
29 AS 06.60.710 and 06.60.720, any outstanding portion of the small claims judgment
30 from money appropriated to the department for the purpose.

31 * **Sec. 70.** AS 06.60.700(b) is amended to read:

1 (b) Before making payment under (a) of this section, the person who received
 2 the award shall file with the department a copy of the final judgment and an affidavit
 3 stating that more than 30 days have elapsed since the judgment became final and that
 4 the judgment has not yet been satisfied by the mortgage loan originator licensee
 5 against whom the award was made.

6 * **Sec. 71.** AS 06.60.710(b) is amended to read:

7 (b) The maximum liability for fund claims against one mortgage loan
 8 originator licensee may not exceed \$50,000.

9 * **Sec. 72.** AS 06.60.710(c) is amended to read:

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

17 * **Sec. 73.** AS 06.60 is amended by adding a new section to read:

18 **Sec. 06.60.715. Other rights of claimant.** The rights granted to a claimant
 19 under AS 06.60.500 - 06.60.750 do not limit any other cause of action the claimant
 20 may have against a mortgage loan originator.

21 * **Sec. 74.** AS 06.60.745 is amended to read:

22 **Sec. 06.60.745. Reimbursement for expenses.** If the department pays all or a
 23 portion of a fund claim against a mortgage loan [AN] originator licensee under
 24 AS 06.60.680 or 06.60.700, the department may recover from the mortgage loan
 25 originator licensee, in addition to the payment of the fund claim, the expenses incurred
 26 by the department to process and otherwise handle the fund claim.

27 * **Sec. 75.** AS 06.60.750 is amended to read:

28 **Sec. 06.60.750. Disciplinary action against a mortgage loan [AN]**
 29 **originator licensee.** Repayment in full of all obligations to the fund does not nullify or
 30 modify the effect of disciplinary proceedings brought against a mortgage loan [AN]
 31 originator licensee under this chapter.

1 * **Sec. 76.** AS 06.60.800 is amended by adding a new subsection to read:

2 (e) The program administration fees collected under this section shall be
3 separately accounted for and may be appropriated by the legislature to the department
4 for the operation of this chapter.

5 * **Sec. 77.** AS 06.60.850 is amended to read:

6 **Sec. 06.60.850. Publication of disciplinary action.** The department may
7 release, through the Internet, the registry, or other [FOR] publication, [IN A
8 NEWSPAPER OF GENERAL CIRCULATION IN THE LOCALE OF A
9 LICENSEE'S PRINCIPAL OFFICE] notice of disciplinary action taken by the
10 department against a person required to be licensed under this chapter [THE
11 LICENSEE].

12 * **Sec. 78.** AS 06.60.890 is amended to read:

13 **Sec. 06.60.890. Application to Internet activities.** This chapter applies to a
14 person [, INCLUDING A SMALL MORTGAGE LENDER TO THE EXTENT THIS
15 CHAPTER APPLIES TO A SMALL MORTGAGE LENDER,] even if the person is
16 engaging in the activities regulated by this chapter by using an Internet website from
17 within or outside the state.

18 * **Sec. 79.** AS 06.60.900 is amended to read:

19 **Sec. 06.60.900. Applicability of administrative procedures.**
20 Notwithstanding AS 06.01.030(f), the [THE] provisions of AS 44.62 (Administrative
21 Procedure Act) apply to an action of the department to deny, revoke, or suspend a
22 license under this chapter, to censure, suspend, or bar a person under AS 06.60.410, to
23 take other disciplinary action under this chapter, to hold disciplinary hearings, and to
24 issue disciplinary orders.

25 * **Sec. 80.** AS 06.60.905 is amended to read:

26 **Sec. 06.60.905. Untrue, misleading, or false statements.** A person [,
27 INCLUDING A SMALL MORTGAGE LENDER,] may not, in a document filed with
28 the department or in an examination, an investigation, a hearing, or another proceeding
29 under this chapter, make or cause to be made an untrue statement of a material fact, or
30 omit to state a material fact necessary in order to make the statement made, in the light
31 of the circumstances under which it is made, not misleading or false.

1 * **Sec. 81.** AS 06.60.990 is repealed and reenacted to read:

2 **Sec. 06.60.990. Definitions.** In this chapter, unless the context otherwise
3 requires,

4 (1) "borrower" means an individual who receives a mortgage loan;

5 (2) "consumer reporting agency" means a consumer reporting agency
6 that compiles and maintains files on consumers on a nationwide basis; in this
7 paragraph, "consumer reporting agency that compiles and maintains files on
8 consumers on a nationwide basis" has the meaning given in 15 U.S.C. 1681a(p) (Fair
9 Credit Reporting Act);

10 (3) "control" means the power, directly or indirectly, to direct the
11 management or policies of a company, whether through ownership of securities, by
12 contract, or otherwise; an individual is presumed to control a company if the
13 individual

14 (A) is a director, general partner, or executive officer, including
15 chief executive officer, chief financial officer, chief operations officer, chief
16 legal officer, chief credit officer, or chief compliance officer, or occupies a
17 similar position or performs a similar function;

18 (B) directly or indirectly, has the right to vote 10 percent or
19 more of a class of voting security or has the power to sell or direct the sale of
20 10 percent or more of a class of voting securities;

21 (C) in the case of a limited liability company,

22 (i) is a managing member;

23 (ii) is a member who has the right to receive on
24 dissolution, or has contributed, 10 percent or more of the capital of the
25 limited liability company; or

26 (iii) if the limited liability company is managed by
27 elected or appointed managers, is an elected or appointed manager; or

28 (D) in the case of a partnership, has the right to receive on
29 dissolution, or has contributed, 10 percent or more of the capital;

30 (4) "control person" means an individual described in the uniform
31 mortgage lender and mortgage broker application form of the registry who directly or

- 1 indirectly exercises control over the applicant;
- 2 (5) "department" means the Department of Commerce, Community,
3 and Economic Development;
- 4 (6) "depository institution" has the meaning given in 12 U.S.C. 1813
5 (Federal Deposit Insurance Act) and includes a credit union;
- 6 (7) "dwelling" means a residential structure or mobile home that
7 contains one to four family housing units, or the individual units of condominiums or
8 cooperatives;
- 9 (8) "federal banking agency" means the Board of Governors of the
10 Federal Reserve System, the Comptroller of the Currency, the director of the Office of
11 Thrift Supervision, the National Credit Union Administration, and the Federal Deposit
12 Insurance Corporation;
- 13 (9) "fund" means the mortgage loan originator surety fund established
14 under AS 06.60.500;
- 15 (10) "fund claim" means a claim against the fund;
- 16 (11) "fund fee" means the fee required to be paid by AS 06.60.550;
- 17 (12) "individual" means a natural person;
- 18 (13) "knowingly" has the meaning given in AS 11.81.900(a);
- 19 (14) "license" means a license issued under this chapter;
- 20 (15) "licensed mortgage loan originator" means a person who holds a
21 mortgage loan originator license issued under this chapter;
- 22 (16) "licensee" means a person who holds a license issued under this
23 chapter;
- 24 (17) "loan processor or underwriter" means an individual who
25 performs clerical or support duties as an employee at the direction of and subject to the
26 supervision and instruction of a person required to be licensed or exempt from
27 licensing under this chapter; in this paragraph, "clerical or support duties" includes,
28 subsequent to the receipt of an application,
- 29 (A) the receipt, collection, distribution, and analysis of
30 information common for the processing or underwriting of a mortgage loan;
31 and

1 (B) communicating with a consumer to obtain the information
 2 necessary for the processing or underwriting of a loan, to the extent that the
 3 communication does not include offering or negotiating loan rates or terms or
 4 counseling consumers about mortgage loan rates or terms;

5 (18) "mortgage broker" means a person who, for compensation or gain,
 6 or in the expectation of compensation or gain, directly or indirectly, by telephone, by
 7 electronic means, by mail, through the Internet, in person, or by the person itself or a
 8 mortgage loan originator,

9 (A) arranges with a variety of lending sources, including
 10 private lenders, institutional investors, or wholesale lenders, to provide
 11 financing for mortgage loans; or

12 (B) assists or offers to assist a borrower or potential borrower
 13 to obtain financing for a mortgage loan;

14 (19) "mortgage lender"

15 (A) means a person who consummates and funds a mortgage
 16 loan and who is named as the payee in the promissory note and as the
 17 beneficiary of the deed of trust;

18 (B) does not include a subsequent purchaser of a mortgage loan
 19 or an interest in a mortgage loan that is originated by a licensee under this
 20 chapter;

21 (20) "mortgage license" means a license issued under this chapter to
 22 operate as a mortgage lender or a mortgage broker;

23 (21) "mortgage licensee" means a person who holds a mortgage
 24 license;

25 (22) "mortgage loan" means a loan that is primarily for personal,
 26 family, or household use and that is secured by a mortgage, deed of trust, or other
 27 equivalent consensual security interest on a dwelling or residential property on which
 28 a dwelling is constructed or intended to be constructed;

29 (23) "mortgage loan originator"

30 (A) means an individual who, for compensation or gain, or in
 31 the expectation of compensation or gain,

- 1 (i) takes a mortgage loan application; or
 2 (ii) offers or negotiates terms of a mortgage loan;

3 (B) does not include an individual who is not otherwise
 4 described in (A) of this paragraph and who is engaged solely as a loan
 5 processor or underwriter on behalf of a person described in (A) of this
 6 paragraph, except as provided in AS 06.60.013;

7 (C) does not include an individual who only performs real
 8 estate brokerage activities and is licensed or registered under applicable state
 9 law, unless the individual is compensated by a lender, a mortgage broker, or
 10 another mortgage loan originator, or by an agent of the lender, mortgage
 11 broker, or other mortgage loan originator; in this subparagraph, "real estate
 12 brokerage activity" means an activity that involves offering or providing real
 13 estate brokerage services to the public, including

14 (i) acting as a real estate agent or real estate broker for a
 15 buyer, seller, lessor, or lessee of real property;

16 (ii) bringing together parties interested in the sale,
 17 purchase, lease, rental, or exchange of real property;

18 (iii) negotiating, on behalf of a party, a portion of a
 19 contract relating to the sale, purchase, lease, rental, or exchange of real
 20 property other than in connection with providing financing with respect
 21 to the transaction;

22 (iv) engaging in an activity for which a person engaged
 23 in the activity is required to be registered or licensed as a real estate
 24 agent or real estate broker under an applicable law; and

25 (v) offering to engage in an activity, or act in a capacity,
 26 described in (i), (ii), (iii), or (iv) of this subparagraph; and

27 (D) does not include a person solely involved in extensions of
 28 credit relating to timeshare plans; in this subparagraph, "timeshare plan" has
 29 the meaning given in 11 U.S.C. 101 (Bankruptcy Code);

30 (24) "mortgage loan originator license" means a license issued to a
 31 person to operate as a mortgage loan originator;

1 (25) "Nationwide Mortgage Licensing System and Registry" has the
 2 meaning given in 12 U.S.C. 5102 (Secure and Fair Enforcement for Mortgage
 3 Licensing Act of 2008);

4 (26) "nontraditional mortgage product" means a mortgage product
 5 other than a 30-year fixed-rate mortgage;

6 (27) "operate" means hold out, do business, offer to provide services,
 7 or provide services; in this paragraph, "hold out" means to represent to the public,
 8 through advertising or other means of communicating or providing information,
 9 including the use of business cards, stationery, brochures, signs, rate lists, or other
 10 promotional items, that the person can or will perform an activity for which a license
 11 is required under this chapter;

12 (28) "operate in the state" includes operating in the state from a
 13 location outside the state or from an Internet website that originates inside or outside
 14 the state;

15 (29) "program administration fee" means the fee described under
 16 AS 06.60.800(a);

17 (30) "record" means information that is inscribed on a tangible
 18 medium or that is stored in an electronic or other medium and is retrievable in
 19 perceivable form;

20 (31) "registered mortgage loan originator" means an individual who
 21 (A) is a mortgage loan originator and is an employee of
 22 (i) a depository institution;
 23 (ii) a subsidiary that is owned and controlled by a
 24 depository institution and regulated by a federal banking agency; or
 25 (iii) an institution regulated by the Farm Credit
 26 Administration; and
 27 (B) is registered with the registry and maintains a unique
 28 identifier with the registry;

29 (32) "registry" means the Nationwide Mortgage Licensing System and
 30 Registry;

31

1 (33) "residential mortgage loan" means a mortgage loan for residential
2 real property;

3 (34) "residential property" means real property located in the state on
4 which a dwelling is constructed or intended to be constructed;

5 (35) "unique identifier" means a number or other identifier assigned to
6 a licensee by protocols established by the registry.

7 * **Sec. 82.** AS 06.60.995 is amended to read:

8 **Sec. 06.60.995. Short title.** This chapter may be known as the Alaska Secure
9 and Fair Enforcement for Mortgage Licensing Act of 2010 [MORTGAGE
10 LENDING REGULATION ACT].

11 * **Sec. 83.** AS 12.62.400 is amended to read:

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

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

23 (2) licensure as a mortgage lender, a mortgage broker, or a mortgage
24 loan [AN] originator under AS 06.60;

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

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

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

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

30 (7) a position involving supervisory or disciplinary power over a minor
31 or dependent adult for which criminal justice information may be released under

1 AS 12.62.160(b)(9);

2 (8) a teacher certificate under AS 14.20;

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

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

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

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

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

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

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

15 * **Sec. 84.** AS 12.62.400 is amended by adding a new subsection to read:

16 (b) Notwithstanding (a) of this section, an applicant for a license under
17 AS 06.60 may submit the applicant's fingerprints to the Nationwide Mortgage
18 Licensing System and Registry. In this subsection, "Nationwide Mortgage Licensing
19 System and Registry" has the meaning given in 12 U.S.C. 5102.

20 *Change 9* — * **Sec. 85.** AS 06.60.017, 06.60.025, 06.60.065, 06.60.070, 06.60.075, 06.60.090(i),
21 06.60.097(b), 06.60.105, 06.60.145, 06.60.150, 06.60.440, 06.60.540, 06.60.810, and
22 06.60.870 are repealed.

23 * **Sec. 86.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 **TRANSITION: EXISTING LICENSES ISSUED UNDER FORMER AS 06.60;**
26 **LICENSES AFTER JULY 1, 2010.** (a) A person holding a valid license issued under former
27 AS 06.60, on or before July 1, 2010, may continue to operate under that license until the
28 license expires, is revoked, or is suspended, and, except as provided by (c) of this section, this
29 Act, including its provisions on expiration, renewal, prohibitions, revocation, suspension, and
30 enforcement, applies to the license and to the person's operation under the license.

31 (b) A person who is not licensed under former AS 06.60 before July 1, 2010, and files

1 an application for licensing under this Act on or after July 1, 2010, shall comply with the
2 requirements of this Act to receive a license under this Act.

3 (c) AS 06.60.027, as repealed and reenacted by sec. 8 of this Act, does not apply to
4 the renewal of a mortgage license valid on July 1, 2010, except for a mortgage license
5 application amendment submitted on or after July 1, 2010, requesting approval of a change of
6 a control person. In this subsection, "control person" and "mortgage license" have the
7 meanings given in AS 06.60.990.

8 * **Sec. 87.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 **TRANSITION: TEMPORARY FEES AND BOND AMOUNT.** (a) If the regulations
11 adopted by the Department of Commerce, Community, and Economic Development under
12 sec. 88 of this Act do not take effect July 1, 2010, then, during the period of July 1, 2010,
13 until the effective date of the regulations adopted under sec. 88 of this Act,

14 (1) notwithstanding AS 06.60.035(a), as amended by sec. 9 of this Act, the
15 application fee under AS 06.60.035(a)(1), as amended by sec. 9 of this Act, shall be \$250, and
16 the license fee under AS 06.60.035(a)(2), as amended by sec. 9 of this Act, shall be \$500;

17 (2) notwithstanding AS 06.60.045(a), as amended by sec. 14 of this Act, the
18 amount of the bond under AS 06.60.045(a), as amended by sec. 14 of this Act, shall be
19 \$25,000;

20 (3) notwithstanding AS 06.60.550(a), as amended by sec. 58 of this Act, the
21 amount of the fund fee under AS 06.60.550(a), as amended by sec. 58 of this Act, shall be
22 \$150; and

23 (4) notwithstanding AS 06.60.550(d), as amended by sec. 59 of this Act, the
24 amount of the fund fee under AS 06.60.550(d), as amended by sec. 59 of this Act, shall be
25 \$150.

26 * **Sec. 88.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 **TRANSITION: REGULATIONS.** (a) The Department of Commerce, Community,
29 and Economic Development may adopt regulations necessary to implement this Act. The
30 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,
31 2010.

1 (b) The department shall notify the revisor of statutes of the date on which the
2 regulations take effect.

3 * **Sec. 89.** Section 88 of this Act takes effect immediately under AS 01.10.070(c).

4 * **Sec. 90.** Except as provided in sec. 89 of this Act, this Act takes effect July 1, 2010.

Purpose: to bring Alaska's Mortgage Lending Regulation Act into compliance with federal Public Law 110-289, Title V, Secure and Fair Enforcement for Mortgage Licensing Act (the SAFE Act).

Two Requirements: The SAFE Act requires each state to: (1) license mortgage loan originators through a nationwide database and (2) amend its statutes to meet minimum licensing standards. States still review the uniform applications submitted by applicants, and state regulators issue the licenses.

Alaska met the first requirement last year, by joining the Nationwide Mortgage Licensing System and Registry (the registry) and began licensing through the registry on August 1, 2009.

If Alaska does not comply with the second requirement, through the passage of SB 279, then the SAFE Act mandates that the U.S. Dept. of Housing and Urban Development begin enforcing the required licensing standards. The effective date of this bill is July 1, 2010.

Major Changes to Alaska Law:

P6/L8; Sect. 9	Renewals changed from biennial to annual
P6/L23; Sect. 11	Permits fees to be set in regulation
P6/L28; Sect. 12	Requires 20 hours of pre-licensing education.
P10/L18; Sect. 18	Authorizes the division to issue a provisional license if fingerprint card processing is excessively delayed, but all other requirements are met
P12/L18; Sect. 22	Omits references to paper licenses, in anticipation of going paperless, due to availability of registry data
P14/L6; Sect. 29	Permits branch office registration
P15/L22; Sect. 35	Modifies continuing education requirements from 24 hours every 2 years, to 8 hours annually
P41/L12; Sect. 84	Allows fingerprint cards to be sent to the registry, rather than the Department of Public Safety for submittal to the FBI for background checks
P41/L17; Sect. 85	Eliminates the small mortgage lender/originator exemption

Fiscal Note:

Adds funding for the following expenses:

- One additional occupational licensing position (\$65,000 per year) and in the contractual line \$3,000 for costs and supplies associated with this position
- Increased travel to out-of-state exams, due to the additional number of licensees in other states doing business in Alaska particularly over the Internet
- Annual membership fee for AARMR (\$750 annually)
- State background check fee (\$5250) which the division must upfront until fee is collected from licensee for deposit into the general fund. The licensee will pay the federal background check fee directly.

Revenue is expected to increase substantially, due to expansion of licensee definition to include loan modification and servicing companies, as well as the required change to annual license renewal.

Explanation of CS to SB 279

Attached are proposed technical changes to SB 279, prepared in response to comments received from the Conference of State Bank Supervisors ("CSBS")* after the bill passed out of the Senate Labor and Commerce Committee. None of these amendments provides any change in the intent behind the language of SB 279. With these changes, CSBS will be satisfied that SB 279 complies with the SAFE Act.

1. 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) on page 7 of the bill will be unnecessary under the SAFE Act. The changes that address these issues are in AS 06.60.038 (pre-licensing education) on page 7 of the bill and in AS 06.60.160 (continuing education) on page 16 of the bill.

2. 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 in the bill 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 on page 7 of the bill.

3. 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

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

dishonesty, a breach of trust, or money laundering” for felonies occurring within seven years of the application. This is inconsistent with the SAFE Act. The amendment to AS 06.60.060 on page 9 of the bill corrects the inconsistency.

4. 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 incorporates the elements of the SAFE definition in “mortgage loan,” read in combination with the definition of “residential property.” SB 279 also contains a separate definition of “residential mortgage loan” that incorporates the defined phrase “mortgage loan,” but adds “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 is 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 the amendments to AS 06.60.990 on pages 37 and 40 of the bill.

SENATE FINANCE COMMITTEE RE. JRT

DATE: 3/4/10

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered

SENATE BILL NO. 279

SB 279 MORTGAGE LENDING

"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."

and recommends:

- be replaced with SCS or CS SB 279 (FIN)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:
<input type="checkbox"/> Same Title
<input type="checkbox"/> New Title
HOUSE BILL:
<input type="checkbox"/> Same Title
<input type="checkbox"/> Technical Title Change
<input type="checkbox"/> New Title w/ SCR # _____



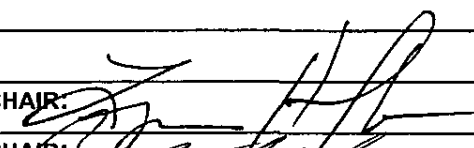

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Thomas	✓			
	Thomas	✓			
CO-CHAIR: 	Hoffman	✓			
CO-CHAIR: 	Hoffman	✓			

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.

*adapted
3/29/10 N/O*

AMENDMENT *By Senator Egan*

OFFERED IN THE SENATE

TO: CSSB 279(), Draft Version "S"

1 Page 3, line 15, following "of":

2 Insert "the Internet,"

3

4 Page 4, line 3, following "individual":

5 Insert "seller"

6

7 Page 11, line 6:

8 Delete "suspended, or"

9 Insert "is suspended, is"

10

11 Page 12, following line 1:

12 Insert a new subsection to read:

13 "(c) The department shall approve or deny the application for renewal of a
14 license not later than 60 days after the renewal application is filed."

15

16 Page 12, line 22:

17 ~~Delete~~ ~~Insert~~ "and [,] address [,]"

18 Insert ", the licensee's address,"

19

20 Page 14, line 14, following "department":

21 Insert "that is made in a record"

22

23 Page 20, line 6:

1 Delete "section"

2 Insert "chapter"

3

4 Page 30, line 19:

5 Delete "a"

*Adopted
3/29/10 N/O*

26-LS1295\S
Bannister
3/19/10

CS FOR SENATE BILL NO. 279()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATOR PASKVAN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to regulation of residential mortgage lending, including the licensing of**
2 **mortgage lenders, mortgage brokers, and mortgage loan originators, and compliance**
3 **with certain federal laws relating to residential mortgage lending; and providing for an**
4 **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 06.60 [, A SMALL MORTGAGE LENDER UNDER AS 06.60,
13 **AND AN ORIGINATOR UNDER AS 06.60 WHO IS EMPLOYED BY OR WORKS**
14 **UNDER EXCLUSIVE CONTRACT FOR A SMALL MORTGAGE LENDER; IN**

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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 06.60.010 is repealed and reenacted to read:

Sec. 06.60.010. Mortgage lender or mortgage broker license required. (a)

Unless exempt under AS 06.60.015, a person may not operate in the state as a mortgage lender or mortgage broker with respect to a dwelling located in the state unless the person is licensed as a mortgage lender or mortgage broker under this chapter.

(b) A mortgage lender or mortgage broker required to be licensed under this chapter shall register with the registry and maintain a valid unique identifier issued by the registry.

(c) A mortgage license may cover more than one location of a mortgage licensee.

(d) A person who operates as both a mortgage lender and a mortgage broker is only required to obtain one mortgage license.

* Sec. 3. AS 06.60 is amended by adding new sections to read:

Sec. 06.60.012. Mortgage loan originator license required. (a)

Unless exempt under AS 06.60.015, an individual may not operate in the state as a mortgage loan originator with respect to a dwelling located in the state unless the individual is licensed as a mortgage loan originator under this chapter.

(b) An individual required to be licensed as a mortgage loan originator shall

(1) register with the registry and maintain a valid unique identifier issued by the registry;

(2) work under exclusive contract for, or as an employee of, a mortgage licensee; and

1 (3) be sponsored in the registry by a mortgage licensee under a
2 sponsorship approved in the registry by the department; in this paragraph, "sponsored"
3 means authorized to conduct business as a mortgage loan originator under the
4 supervision of a mortgage licensee.

5 **Sec. 06.60.013. Loan processors or underwriters.** (a) A loan processor or
6 underwriter who is an independent contractor may not operate as a loan processor or
7 underwriter unless the independent contractor loan processor or underwriter is
8 licensed as a mortgage loan originator under this chapter. An independent contractor
9 loan processor or underwriter licensed as a mortgage loan originator shall register with
10 the registry and maintain a valid unique identifier issued by the registry.

11 (b) An individual engaged solely in loan processor or underwriter activities
12 who is not an independent contractor is not required to be licensed as a mortgage loan
13 originator under this chapter if the individual does not represent to the public, through
14 advertising or other means of communicating or providing information, including the
15 use of business cards, stationery, brochures, signs, rate lists, or other promotional
16 items, that the individual can or will perform any of the activities of a mortgage loan
17 originator.

18 * **Sec. 4.** AS 06.60.015 is repealed and reenacted to read:

19 **Sec. 06.60.015. Exemptions.** (a) The following persons are exempt from the
20 mortgage lender or mortgage broker licensing requirements of this chapter:

21 (1) a depository institution;

22 (2) a subsidiary that is

23 (A) owned and controlled by a depository institution; and

24 (B) regulated by a federal banking agency; or

25 (3) an institution regulated by the Farm Credit Administration.

26 (b) The following individuals are exempt from the mortgage loan originator
27 licensing requirements of this chapter:

28 (1) a registered mortgage loan originator, when acting for an entity
29 described in (a)(1), (2), or (3) of this section;

30 (2) an individual who offers or negotiates terms of a residential
31 mortgage loan with or on behalf of an immediate family member of the individual; in

1 this paragraph, "immediate family member" means a spouse, child, stepchild, sibling,
2 stepsibling, parent, stepparent, grandparent, or grandchild;

3 (3) an individual who offers or negotiates terms of a residential
4 mortgage loan secured by a dwelling that serves as the individual's residence;

5 (4) a licensed attorney who negotiates the terms of a residential
6 mortgage loan on behalf of a client as an ancillary matter to the attorney's
7 representation of the client, unless the attorney is compensated by a lender, a mortgage
8 broker, or another mortgage loan originator or by an agent of a lender, a mortgage
9 broker, or another mortgage loan originator.

10 * **Sec. 5.** AS 06.60 is amended by adding a new section to read:

11 **Sec. 06.60.016. Registry.** (a) The department may participate in the registry
12 and pay the fees required for participation in the registry.

13 (b) The department

14 (1) may establish relationships or contracts with the registry or other
15 entities designated by the registry to collect and maintain records and process
16 transaction fees or other fees related to licensees or other persons subject to this
17 chapter;

18 (2) shall require mortgage licensees and mortgage loan originators to
19 register with the registry; and

20 (3) shall establish by regulation a process that allows mortgage
21 licensees and mortgage loan originators to challenge information entered into the
22 registry by the department.

23 (c) The department may adopt emergency regulations under AS 44.62
24 (Administrative Procedure Act) to implement this section, including emergency
25 regulations for the assessment of fees.

26 * **Sec. 6.** AS 06.60.020 is repealed and reenacted to read:

27 **Sec. 06.60.020. Application for license.** (a) An application for a license under
28 this chapter must

29 (1) be on the form prescribed by the department and the registry;

30 (2) contain complete information regarding the applicant;

31 (3) include fingerprints of the applicant, as needed to conduct a

1 background check; and

2 (4) contain other information or supporting material that the
3 department may require concerning the applicant, including the organization and
4 operations of an applicant for a mortgage license and the financial responsibility,
5 background, experience, and activities of the applicant.

6 (b) In this section, "applicant" includes a control person of an applicant for a
7 mortgage license.

8 * **Sec. 7.** AS 06.60.026 is amended to read:

9 **Sec. 06.60.026. Transfer of mortgage loan originator license.** A person who
10 holds a mortgage loan [AN] originator license may not transfer or assign the
11 mortgage loan originator license.

12 * **Sec. 8.** AS 06.60.027 is repealed and reenacted to read:

13 • **Sec. 06.60.027. Background checks.** (a) To apply for a mortgage loan
14 originator license or a mortgage license, the applicant shall, at a minimum, furnish
15 information concerning the applicant's identity to the registry or the department,
16 including

17 (1) fingerprints for submission to the Federal Bureau of Investigation
18 and any governmental agency or entity authorized to receive that information for a
19 state, national, and international criminal history background check; and

20 (2) personal history and experience in a form prescribed by the registry
21 and authorization for the registry and the department to obtain

22 (A) an independent credit report from a consumer reporting
23 agency; and

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

26 (b) For the purposes of this section, the department may use the registry as an
27 agent for requesting information from and distributing information to the United States
28 Department of Justice, another governmental agency, or another source directed by the
29 department.

30 (c) As part of the investigation of an application for a license under this
31 chapter, the department or the registry shall

1 (1) submit fingerprints of the applicant and a control person of the
2 applicant to the governmental agency or entity authorized to receive the fingerprints
3 for a state, national, or international criminal history background check under (a)(1) of
4 this section; and

5 (2) obtain an independent credit report and other information related to
6 administrative, civil, or criminal findings regarding the applicant and each control
7 person of the applicant under (a)(2) of this section.

8 * **Sec. 9.** AS 06.60.035(a) is amended to read:

9 (a) **When** [EXCEPT AS PROVIDED BY (c) OF THIS SECTION, WHEN]
10 an applicant submits an application for a license under this chapter to the department,
11 the applicant shall pay to the department

12 (1) **an** [A NONREFUNDABLE] application fee [OF \$250] in partial
13 payment of those investigation expenses incurred by the department; and

14 (2) **an annual** [A BIENNIAL] license fee [OF \$500] for the period
15 that terminates **on December 31** [TWO YEARS] after the date the license is issued;
16 after this payment, the **annual** [BIENNIAL] license fee is due every **year, subject to**
17 **renewal by the department** [TWO YEARS ON THE ANNIVERSARY DATE OF
18 THE ORIGINAL ISSUANCE OF THE LICENSE].

19 * **Sec. 10.** AS 06.60.035(c) is repealed and reenacted to read:

20 (c) The fees imposed by this section are in addition to the fees charged by the
21 registry and the business license fees assessed under AS 43.70 (Alaska Business
22 License Act).

23 * **Sec. 11.** AS 06.60.035 is amended by adding a new subsection to read:

24 (d) The department may establish by regulation the amount and manner of
25 payment of application fees, examination fees, license fees, permit fees, investigation
26 fees, and all administrative or other fees or penalties under this chapter. The fees
27 established under this chapter are nonrefundable.

28 * **Sec. 12.** AS 06.60 is amended by adding a new section to read:

29 **Sec. 06.60.038. Prelicensing and relicensing education of mortgage loan**
30 **originators.** (a) Before being licensed as a mortgage loan originator, an individual
31 shall complete at least 20 hours of education approved under (b) of this section. At a

1 minimum, the education must include

2 (1) three hours of instruction in federal statutes and regulations relating
3 to mortgage origination, fraud prevention, consumer protection, the nontraditional
4 mortgage marketplace, and fair lending.;

5 (2) three hours of instruction in ethics, including instruction on issues
6 related to fraud prevention, consumer protection, and fair lending; and

7 (3) two hours of training related to lending standards for the
8 nontraditional mortgage product marketplace.

9 (b) For the purposes of (a) of this section, a prelicensing education course
10 must be approved under 12 U.S.C. 5104(c)(2) (Secure and Fair Enforcement for
11 Mortgage Licensing Act of 2008). Review and approval of a prelicensing education
12 course includes review and approval of the course provider.

13 (c) Nothing in this section precludes a prelicensing education course that is
14 approved under (b) of this section and that is provided by the employer of the
15 applicant, an entity affiliated with the applicant, or a subsidiary or affiliate of an
16 employer or entity affiliated with the applicant.

17 (d) Prelicensing education may be offered in a classroom, on-line, or by other
18 means approved under 12 U.S.C. 5104(c)(2) (Secure and Fair Enforcement for
19 Mortgage Licensing Act of 2008).

20 * **Sec. 13.** AS 06.60.040 is repealed and reenacted to read:

21 **Sec. 06.60.040. Testing of mortgage loan originators.** (a) Before being
22 licensed as a mortgage loan originator, an individual shall pass, under the standards
23 established by this section, a qualified written test on appropriate subject areas,
24 including federal and state law, under 12 U.S.C. 5104(d) (Secure and Fair
25 Enforcement for Mortgage Licensing Act of 2008).

26 (b) The department shall treat a written test as a qualified written test for
27 purposes of (a) of this section if the department finds that the test adequately measures
28 the applicant's knowledge and comprehension in appropriate subject areas, including

29 (1) ethics; and

30 (2) federal and state statutes and regulations relating to mortgage
31 origination, fraud prevention, consumer protection, the nontraditional mortgage

1 marketplace, and fair lending.

2 (c) This section does not prohibit a test provider approved by the registry from
3 providing a test at the location of the employer of the applicant, the location of a
4 subsidiary or affiliate of the employer of the applicant, or the location of an entity with
5 which the applicant holds an exclusive arrangement to conduct the business of a
6 mortgage loan originator.

7 (d) To pass a qualified written test, an applicant must answer at least 75
8 percent of the questions correctly.

9 (e) An individual may retake a test three consecutive times, but each
10 consecutive taking of a test must occur at least 30 days after taking the preceding test.

11 (f) After failing three consecutive takings of the same test, an individual shall
12 wait at least six months before retaking the test.

13 (g) A licensed mortgage loan originator who fails to maintain a valid license
14 for a period of five years or longer shall retake the test. The period without a valid
15 license under this subsection does not include the time the individual is a registered
16 mortgage loan originator.

17 (h) The department may assess a fee for each administration of a qualified
18 written test.

19 * Sec. 14. AS 06.60.045(a) is amended to read:

20 (a) An applicant for a mortgage license shall file with the application
21 submitted to the department under AS 06.60.020 a bond with one or more sureties,
22 **The department shall establish by regulation the amount of the required bond**
23 **and the standards and procedures for recovery on the bond** [IN THE AMOUNT
24 OF \$25,000 UNDER WHICH THE APPLICANT IS THE OBLIGOR]. The bond
25 must be satisfactory to the department.

26 * Sec. 15. AS 06.60.045(d) is amended to read:

27 (d) The bond required under (a) of this section must be continuous until **three**
28 **years after** the department revokes or otherwise terminates the license.

29 * Sec. 16. AS 06.60.050(a) is amended to read:

30 (a) Within 30 days after the date the department determines that it has
31 received a complete application under **AS 06.60.020** [AS 06.60.020 OR 06.60.025],

1 the required bond if the application is for a mortgage license, and any required fees
2 and investigative costs, the department shall either grant or deny the license.

3 * **Sec. 17.** AS 06.60.060 is repealed and reenacted to read:

4 **Sec. 06.60.060. Determinations before licensing.** Before granting a license
5 under this chapter, the department shall determine, at a minimum, that

6 (1) the applicant has complied with the requirements of this chapter for
7 obtaining the license;

8 (2) the applicant, including a control person of the applicant, has

9 (A) never had a mortgage lender, mortgage broker, or mortgage
10 loan originator license revoked by a governmental jurisdiction, except that, if a
11 revocation has been formally vacated, the revocation is not considered a
12 revocation under this paragraph; in this paragraph,

13 (i) a control person of an applicant for a mortgage
14 license includes an entity over which the control person exercised
15 control at the time of the revocation; and

16 (ii) an applicant for a mortgage loan originator license
17 includes an entity over which the applicant exercised control at the time
18 of the revocation;

19 (B) not been convicted of, or pled guilty or no contest to, a
20 felony in a domestic, foreign, or military court during the seven-year period
21 preceding the date of the application, or at any time preceding the date of
22 application if the felony involved an act of fraud, dishonesty, a breach of trust,
23 or money laundering; however, if the applicant has been pardoned for the
24 conviction, the conviction is not considered a conviction under this
25 subparagraph;

26 (C) demonstrated financial responsibility, character, and
27 general fitness sufficient to command the confidence of the community and to
28 warrant a determination that the applicant will operate honestly, fairly, and
29 efficiently within the purposes of this chapter; under this subparagraph,

30 (i) an applicant does not show financial responsibility if
31 the applicant has shown inattention to or neglect of the management of

1 the person's own financial condition;

2 (ii) a determination that an applicant has not shown
3 financial responsibility may include current outstanding judgments
4 against the applicant, except judgments related solely to a claim related
5 to medical expenses; current outstanding tax liens or other government
6 liens and filings against the applicant; foreclosures of the applicant's
7 property within the three years preceding the date of the application;
8 and a pattern by the applicant of seriously delinquent accounts within
9 the three years preceding the date of the application;

10 (3) the applicant for a mortgage loan originator license

11 (A) has completed the preclicensing education requirement
12 described in AS 06.60.038;

13 (B) has passed a test that meets the requirements described in
14 AS 06.60.040; and

15 (C) has paid the fund fee as required by AS 06.60.550; and

16 (4) the applicant for a mortgage license has provided a bond as
17 required by AS 06.60.045.

18 * **Sec. 18.** AS 06.60 is amended by adding a new section to article 1 to read:

19 **Sec. 06.60.077. Authority to issue provisional license.** (a) Subject to (b) of
20 this section, the department may issue a provisional license to an applicant for a
21 mortgage license if the department has made all determinations under AS 06.60.060
22 necessary for licensure except those determinations based on the criminal history
23 background check required by AS 06.60.027.

24 (b) A provisional license may be granted under this section if the

25 (1) receipt by the department of the results of the criminal history
26 background check is delayed more than 60 days after the date the fingerprints are
27 submitted to the governmental agency that conducts the criminal history background
28 check; and

29 (2) delay described in (1) of this subsection is not caused by the
30 applicant.

31 (c) The duration of a provisional license issued under this section may not

1 exceed 90 days.

2 * **Sec. 19.** AS 06.60.080 is amended to read:

3 **Sec. 06.60.080. Duration of license.** Except for a provisional license issued
4 under AS 06.60.077, a [A] license issued under this chapter remains in effect until
5 December 31 of the year in which [FOR TWO YEARS AFTER] the license is
6 issued, unless the license is revoked, suspended, or surrendered, or becomes
7 [BECOMING] inactive under this chapter.

8 * **Sec. 20.** AS 06.60.085 is repealed and reenacted to read:

9 **Sec. 06.60.085. Renewal of license.** (a) If a licensee intends to renew a license,
10 the licensee shall submit to the department

11 (1) a renewal application at a time and in the form and manner
12 established by the department and the registry;

13 (2) the annual license fee;

14 (3) if the renewal is for a mortgage license,

15 (A) a report, as required by regulation, identifying any changes
16 in the information provided to the department; and

17 (B) current information indicating that the mortgage licensee
18 continues to meet the minimum standards for license issuance;

19 (4) if the renewal is for a mortgage loan originator license,

20 (A) a report, as required by regulation, identifying any changes
21 in the information provided to the department;

22 (B) current information indicating that the mortgage loan
23 originator continues to meet the minimum standards for license issuance;

24 (C) certificates or other documents showing the mortgage loan
25 originator has satisfied the annual continuing education requirements of
26 AS 06.60.160; and

27 (D) the fund fee required by AS 06.60.550; and

28 (5) payment of any other required fees for renewal of the license.

29 (b) The department may adopt by regulation procedures and deadlines
30 regarding the filing of an application for renewal of a license and the assessment of a
31 penalty or other consequence for late filing, consistent with the requirements of the

1 registry.

2 * **Sec. 21.** AS 06.60 is amended by adding a new section to read:

3 **Sec. 06.60.087. Standards for license renewal.** (a) After a licensee complies
4 with AS 06.60.085, the department may renew the licensee's license if

5 (1) the licensee continues to meet the standards for license issuance
6 under AS 06.60.060;

7 (2) in the case of a mortgage loan originator license, the mortgage loan
8 originator licensee has satisfied the annual continuing education requirements of
9 AS 06.60.160;

10 (3) the licensee has paid all required fees for renewal of the license;
11 and

12 (4) the licensee is in compliance with the requirements of this chapter
13 and regulations adopted and orders issued under this chapter.

14 (b) If a licensee fails to satisfy (a) of this section, the license expires at the end
15 of the period for which the license was issued. The department may adopt by
16 regulation procedures for the reinstatement of expired licenses. The procedures must
17 be consistent with the standards established by the registry.

18 * **Sec. 22.** AS 06.60.090(c) is amended to read:

19 (c) For a license to become inactive, a licensee shall provide the department
20 with a written request that the license become inactive [AND RETURN THE
21 LICENSE CERTIFICATE TO THE DEPARTMENT]. The request must include the
22 licensee's name and [,] address [,] and other information [THAT] the department
23 requires to process the request. If the request is made by mortgage licensee, the
24 request must include [AND] a statement by the mortgage licensee that all mortgage
25 loans of the mortgage licensee have been paid in full or sold.

26 * **Sec. 23.** AS 06.60.090(e) is amended to read:

27 (e) If a person holds a license that becomes inactive under this section, the
28 person may not operate as a mortgage lender, mortgage broker, or mortgage loan
29 originator under the license in this state until the license is reactivated.

30 * **Sec. 24.** AS 06.60.090(f) is amended to read:

31 (f) If a license becomes inactive under this section, the license remains

1 inactive until the license expires, the person surrenders the license, or the department
2 approves the reactivation of the license, whichever event occurs first [PERSON
3 WHO HOLDS THE INACTIVE LICENSE PROVIDES THE DEPARTMENT WITH
4 A WRITTEN REQUEST THAT THE LICENSE BE REACTIVATED]. The
5 licensee's request for reactivation must include the information that the department
6 requires to process the request.

7 * Sec. 25. AS 06.60.090(g) is repealed and reenacted to read:

8 (g) While a license is inactive under this section, the person holding the
9 inactive license shall

10 (1) pay the annual license fee as required by AS 06.60.035;

11 (2) inform the department of any change that occurs in the name and
12 address of the person, the location of the person's business, or the business operations
13 or control of the person;

14 (3) maintain the bond required by AS 06.60.045; and

15 (4) file the annual report required by AS 06.60.100(a).

16 * Sec. 26. AS 06.60.095 is repealed and reenacted to read:

17 **Sec. 06.60.095. Reactivation of inactive license.** (a) A person who has an
18 inactive license certificate under AS 06.60.090 may apply to the department for an
19 active license and pay the required fees. To be eligible for license reactivation, the
20 applicant shall comply with all requirements for licensure in effect at the time of
21 reactivation.

22 (b) If the department reactivates a license under this section, the license
23 expires on December 31 of the year in which it is issued.

24 * Sec. 27. AS 06.60.100(a) is amended to read:

25 (a) Annually, on [ON] or before a [MARCH 15, OR ON ANOTHER] date
26 established by the department by regulation, [OF EACH YEAR] a mortgage licensee
27 shall file a report with the department providing [GIVING] relevant information that
28 the department requires concerning the business and operations of [EACH
29 LOCATION IN THIS STATE WHERE] the mortgage licensee [CONDUCTS
30 BUSINESS IN THIS STATE DURING THE PRECEDING CALENDAR YEAR].
31 The mortgage licensee shall make the report under oath or on affirmation. The content

1 and form of the report shall be established by the department by regulation.

2 * **Sec. 28.** AS 06.60.100 is amended by adding a new subsection to read:

3 (c) A mortgage licensee shall submit to the registry, as required by the
4 registry, reports of the condition of the licensee, which must be in the form and
5 contain the information that the registry may require.

6 * **Sec. 29.** AS 06.60 is amended by adding a new section to read:

7 **Sec. 06.60.112. Branch office application.** A mortgage licensee shall submit
8 an application to register a branch office to the department through the registry. The
9 department may adopt by regulation procedures and fees for the submission of an
10 application to register a branch office, consistent with the requirements of the registry.
11 The department may adopt by regulation fees and other requirements for renewal of a
12 branch office registration that are consistent with the requirements of the registry.

13 * **Sec. 30.** AS 06.60.130(a) is amended to read:

14 (a) The prior [WRITTEN] approval of the department is required for the
15 continued operation of a mortgage licensee's business when a change in control of the
16 mortgage licensee is proposed. The department may require the information it
17 considers necessary to determine whether a new application is required. The mortgage
18 licensee requesting approval of the change in control shall pay all reasonable expenses
19 incurred by the department to investigate and approve or deny the change in control.
20 The department may establish by regulation the fees and other requirements for
21 requesting approval of a change in control that are consistent with the
22 requirements of the registry.

23 * **Sec. 31.** AS 06.60.140 is amended to read:

24 **Sec. 06.60.140. Availability of out-of-state records.** A mortgage licensee
25 who operates an office or other place of business outside this state shall, at the request
26 of the department,

27 (1) make the records of the office or place of business available to the
28 department at a location within this state; or

29 (2) reimburse the department its reasonable costs, as provided in
30 AS 06.60.250(k) [AS 06.60.250(f)], that are incurred by the department in conjunction
31 with an investigation or examination conducted at the office or place of business.

1 * **Sec. 32.** AS 06.60.155 is amended to read:

2 **Sec. 06.60.155. Restriction on mortgage loan originator licensee's**
3 **[LICENSEE] work. A mortgage loan [AN] originator licensee may only work as a**
4 **mortgage loan [AN] originator licensee under contract for, or as an employee of, one**
5 **mortgage licensee.**

6 * **Sec. 33.** AS 06.60.157 is amended to read:

7 **Sec. 06.60.157. Restrictions [MORTGAGE LICENSEE RESTRICTIONS]**
8 **on mortgage licensee's performance of mortgage loan originator activities. A**
9 **mortgage licensee may not perform mortgage loan originator activities except**
10 **through a licensed mortgage loan originator who is an employee of or under**
11 **exclusive contract with a mortgage licensee.**

12 * **Sec. 34.** AS 06.60.159 is amended to read:

13 **Sec. 06.60.159. Mortgage licensee's [LICENSEE] employment of, contract**
14 **with, and liability for mortgage loan originator. (a) A mortgage licensee may not**
15 **employ or enter into a contract with a person who acts as a mortgage loan [AN]**
16 **originator for the mortgage licensee unless the person has a mortgage loan [AN]**
17 **originator license.**

18 (b) A mortgage licensee is liable for the conduct of a person acting as a
19 mortgage loan [AN] originator if the mortgage licensee knows or should have known
20 that the person's conduct violates this chapter and the person is employed by or is
21 under contract with the mortgage licensee to act as a mortgage loan [AN] originator.

22 * **Sec. 35.** AS 06.60.160 is repealed and reenacted to read:

23 **Sec. 06.60.160. Continuing education requirements for mortgage loan**
24 **originators. (a) Each calendar year, a licensed mortgage loan originator shall**
25 **complete at least eight hours of education approved under (b) of this section. At a**
26 **minimum, these hours must include**

27 (1) three hours of instruction in federal statutes and regulations;

28 (2) two hours of instruction in ethics, including instruction on issues
29 related to fraud prevention, consumer protection, and fair lending; and

30 (3) two hours of training related to lending standards for the
31 nontraditional mortgage product marketplace.

1 (b) For the purposes of (a) of this section, a continuing education course must
2 be approved under 12 U.S.C. 5105(b)(2) (Secure and Fair Enforcement for Mortgage
3 Licensing Act of 2008). Review and approval of a continuing education course
4 includes review and approval of the course provider.

5 (c) Nothing in this section precludes a continuing education course that is
6 approved under (b) of this section and that is provided by the employer of the
7 applicant, an entity affiliated with the applicant, or a subsidiary or affiliate of an
8 employer or entity affiliated with the applicant.

9 (d) Continuing education may be offered in a classroom, on-line, or by other
10 means approved under 12 U.S.C. 5105(b)(2) (Secure and Fair Enforcement for
11 Mortgage Licensing Act of 2008).

12 (e) A licensed mortgage loan originator

13 (1) except as provided by (i) of this section, may only receive credit for
14 a continuing education course in the calendar year in which the course is taken; and

15 (2) may not retake an approved course in the same or successive
16 calendar years if the mortgage loan originator has previously taken the course to meet
17 the annual requirements for continuing education.

18 (f) A licensed mortgage loan originator who is an approved instructor of an
19 approved continuing education course may receive credit for the licensed mortgage
20 loan originator's own annual continuing education requirement at the rate of two hours
21 of credit for each one hour taught.

22 (g) Successful completion of a continuing education course approved for
23 another state by the registry shall be accepted as credit toward completion of
24 continuing education requirements in this state.

25 (h) Before a new or renewed license may be issued to a licensed mortgage
26 loan originator who has become unlicensed, the mortgage loan originator shall
27 complete the continuing education requirements for the last calendar year in which the
28 mortgage loan originator's license was valid.

29 (i) A person meeting the requirements of AS 06.60.087, other than the
30 continuing education requirement of AS 06.60.087(a)(2), may make up a deficiency in
31 continuing education in a manner established by regulation.

1 * **Sec. 36.** AS 06.60.200 is repealed and reenacted to read:

2 **Sec. 06.60.200. Disciplinary action.** (a) In addition to other disciplinary action
3 allowed under this chapter or under AS 06.01, the department may deny, suspend,
4 revoke, condition, or decline to renew a license or take other disciplinary action
5 against a person subject to this chapter, including action under a regulation adopted
6 under this chapter, if the department finds that the person

7 (1) fails to comply with an applicable provision of this title, an
8 applicable regulation adopted under this title, a lawful demand, ruling, order, or
9 requirement of the department, or other state or federal statute or regulation applicable
10 to the conduct of the licensee's business;

11 (2) fails to meet the minimum standards for issuance or renewal of a
12 license; or

13 (3) knowingly withholds material information or negligently makes a
14 material misstatement in an application for or renewal of a license.

15 (b) The department may

16 (1) order a person subject to this chapter to cease and desist from
17 conducting business, including an immediate temporary order to cease and desist;

18 (2) order a person subject to this chapter to cease and desist from
19 violating this chapter, including an immediate temporary order to cease and desist;

20 (3) impose a fine on a person subject to this chapter under
21 AS 06.60.420;

22 (4) issue an order of rescission, restitution, or disgorgement directed to
23 a person subject to this chapter for a violation of this chapter;

24 (5) order other affirmative action that the department considers
25 necessary, including an accounting, an asset freeze, or the appointment of a receiver.

26 (c) A disciplinary action under this section may be taken by itself or in
27 conjunction with one or more other disciplinary actions under this chapter or under
28 AS 06.01.

29 * **Sec. 37.** AS 06.60.210 is amended to read:

30 **Sec. 06.60.210. Suspension, [OR] revocation, or renewal related to fund.**

31 (a) When an award is made from the fund, the department may suspend, [OR] revoke,

1 or decline to renew the license of the mortgage loan originator licensee whose
2 actions formed the basis of the award.

3 (b) The department shall lift a suspension made under (a) of this section if the
4 mortgage loan originator licensee reaches an agreement with the department on terms
5 and conditions for the repayment to the fund of the money awarded to the claimant
6 and the costs of hearing the fund claim. The department may reimpose the suspension
7 if the mortgage loan originator licensee violates the terms of a repayment agreement
8 entered into under this subsection.

9 * **Sec. 38.** AS 06.60.230 is amended to read:

10 **Sec. 06.60.230. Divestment.** If the department revokes a mortgage license [OR
11 A REGISTRATION OF A SMALL MORTGAGE LENDER], the mortgage licensee
12 [OR THE SMALL MORTGAGE LENDER] shall divest itself of all outstanding loans
13 that were issued under this chapter by selling or assigning them to another mortgage
14 licensee [OR SMALL MORTGAGE LENDER]. Divestment under this section must
15 be approved by the department.

16 * **Sec. 39.** AS 06.60.240 is amended to read:

17 **Sec. 06.60.240. Reinstatement.** The department may reinstate a suspended
18 [REVOKED] license [OR REGISTRATION UNDER AS 06.60.017] if the licensee
19 [OR SMALL MORTGAGE LENDER] complies with this chapter or with a demand,
20 ruling, or requirement made by the department under this chapter. Before
21 reinstatement of a license [OR REGISTRATION UNDER AS 06.60.017], the licensee
22 [OR SMALL MORTGAGE LENDER] shall pay any fees, restitution, and civil
23 penalties owing under this chapter.

24 * **Sec. 40.** AS 06.60.250 is repealed and reenacted to read:

25 **Sec. 06.60.250. Investigation and examination authority.** (a) For the purpose
26 of initial licensing, license renewal, license suspension, license conditioning, license
27 revocation, license termination, or general or specific inquiry or investigation to
28 determine compliance with this chapter, the department may access, receive, use, and
29 copy any books, accounts, records, files, documents, information, or evidence,
30 including

31 (1) criminal, civil, and administrative history information, including

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nonconviction information; in this paragraph, "nonconviction information" has the meaning given in AS 12.62.900;

(2) personal history and experience information, including independent credit reports obtained from a consumer reporting agency; and

(3) other documents, information, and evidence the department considers relevant to the inquiry or investigation, regardless of the location, possession, or custody of the documents, information, or evidence.

(b) Notwithstanding AS 06.01.015, for the purpose of investigating violations or complaints arising under this chapter, or for the purpose of examination, the department may review, investigate, or examine an applicant, licensee, or another person subject to this chapter as often as necessary to carry out the purposes of this chapter. The department may conduct an examination without prior notice to the licensee.

(c) A licensee or other person subject to this chapter shall make available to the department, on request, the place of business, books, records, accounts, safes, and vaults relating to the operations of the licensee or other person subject to this chapter. The department may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee or other person subject to this chapter concerning the licensee's or other person's business.

(d) For the purpose of hearings, investigations, or other proceedings under this chapter, the department or an officer designated by the department may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the department considers relevant or material to the matter.

(e) If a person refuses to comply with a subpoena, the superior court, on application by the department, may issue to the person an order requiring the person to appear before the department to produce documentary evidence or to give evidence regarding the matter under investigation or in question.

(f) A licensee or other person subject to this chapter shall make or compile reports or prepare other information as directed by the department to carry out the

1 purposes of this section, including

2 (1) accounting compilations;

3 (2) information lists and data concerning loan transactions in a format
4 prescribed by the department; and

5 (3) other information considered necessary to carry out the purposes of
6 this section.

7 (g) In making an examination or investigation authorized by this chapter, the
8 department may control access to documents and records of the licensee or other
9 person under examination or investigation. The department may take possession of the
10 documents and records or place a person in exclusive charge of the documents and
11 records in the place where they are usually kept. During the period of control, a person
12 may not remove or attempt to remove any of the documents and records except under
13 a court order or with the consent of the department. In this subsection, "control" does
14 not have the meaning given in AS 06.60.990.

15 (h) To carry out the purposes of this section, the department may

16 (1) retain attorneys, accountants, or other professionals and specialists,
17 including examiners, auditors, or investigators, to conduct or assist in the conduct of
18 examinations or investigations;

19 (2) enter into agreements or relationships with other government
20 officials or regulatory associations to improve efficiency and reduce the regulatory
21 burden by sharing resources, standardized or uniform methods or procedures, and
22 documents, records, information, and evidence obtained under this section;

23 (3) use, hire, contract, or employ public or privately available
24 analytical systems, methods, or electronic software to examine or investigate the
25 licensee, individual, or other person subject to this chapter;

26 (4) accept and rely on examination or investigation reports made by
27 other government officials in this or another state;

28 (5) share information received or collected during an examination,
29 investigation, or other proceeding with other law enforcement agencies; or

30 (6) accept an audit report prepared by an independent certified public
31 accountant for the licensee or other person subject to this chapter and may incorporate

1 an audit report in the report of the examination or other writing of the department.

2 (i) The authority under this section remains in effect, whether or not a licensee
3 or other person subject to this chapter acts or claims to act under a licensing or
4 registration law of the state or claims to act without the authority of a licensing or
5 registration law of the state.

6 (j) A licensee or other person subject to investigation or examination under
7 this section may not knowingly withhold, abstract, remove, mutilate, destroy, or
8 secrete any books, records, computer records, or other information.

9 (k) A person shall reimburse the department for reasonable costs incurred by
10 the department to conduct an examination or investigation under this section. The
11 reimbursement under this subsection may not exceed the rate of \$75 an hour for the
12 examination or investigation, plus travel costs, including a per diem allowance that
13 does not exceed the per diem allowance for employees of the state under
14 AS 39.20.110.

15 * Sec. 41. AS 06.60.260 is amended to read:

16 **Sec. 06.60.260. Revocation, removal, or suspension of mortgage loan**
17 **originator licensee.** If the department finds that **a mortgage loan** [AN] originator
18 licensee is dishonest, reckless, or incompetent when operating as **a mortgage loan**
19 [AN] originator or fails to comply with applicable law, with regulations or orders of
20 the department, or with written requirements or instructions of the department relating
21 to the **mortgage loan** originator license, the department may revoke or suspend the
22 **mortgage loan** originator license, remove the **mortgage loan** originator licensee from
23 operating as **a mortgage loan** [AN] originator in the state, or order a person licensed
24 under this title to remove the **mortgage loan** originator licensee from operating as **a**
25 **mortgage loan** [AN] originator for the person.

26 * Sec. 42. AS 06.60.270 is amended to read:

27 **Sec. 06.60.270. Removal by entity.** A mortgage licensee shall remove **a**
28 **mortgage loan** [AN] originator licensee from acting as **a mortgage loan** [AN]
29 originator for the mortgage licensee if the department directs the mortgage licensee to
30 remove the **mortgage loan** originator licensee under AS 06.60.260.

31 * Sec. 43. AS 06.60 is amended by adding a new section to article 4 to read:

1 **Sec. 06.60.290. Report to the registry.** Notwithstanding AS 06.01.025, the
2 department shall regularly report violations of this chapter, as well as enforcement
3 actions and other relevant information, to the registry, subject to provisions established
4 by the department by regulation.

5 * **Sec. 44.** AS 06.60.320 is amended to read:

6 **Sec. 06.60.320. False, misleading, or deceptive advertising prohibited.** A
7 person [, INCLUDING A SMALL MORTGAGE LENDER,] may not advertise, print,
8 display, publish, distribute, broadcast, or cause or permit to be advertised, printed,
9 displayed, published, distributed, or broadcast, in any manner a statement or
10 representation with regard to the rates, terms, or conditions for a mortgage loan that is
11 false, misleading, or deceptive.

12 * **Sec. 45.** AS 06.60 is amended by adding a new section to read:

13 **Sec. 06.60.325. Display of unique identifier.** A person operating as a
14 mortgage lender, mortgage broker, or mortgage loan originator shall clearly display
15 the unique identifier assigned to the person by the registry on all residential mortgage
16 loan application forms, solicitations, and advertisements, including business cards or
17 websites, and any other documents as established by regulation or order of the
18 department.

19 * **Sec. 46.** AS 06.60.330 is amended to read:

20 **Sec. 06.60.330. Compliance with federal requirements.** A person [,
21 INCLUDING A SMALL MORTGAGE LENDER,] subject to this chapter shall
22 conduct the person's mortgage loan activities in compliance with [12 CFR PART 226
23 AND OTHER REGULATIONS ADOPTED BY THE FEDERAL GOVERNMENT
24 UNDER]

25 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of
26 1974);

27 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

28 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

29 (4) 12 U.S.C. 5101 - 5116 (Secure and Fair Enforcement for
30 Mortgage Licensing Act of 2008);

31 (5) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit

1 Protection Act);

2 (6) [(5)] 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); [AND]

3 (7) [(6)] any other federal statute the purpose of which is to regulate
 4 residential mortgage lending; and

5 (8) regulations adopted under the statutes identified in (1) - (7) of
 6 this section [LAW OR REGULATION].

7 * **Sec. 47.** AS 06.60.340 is repealed and reenacted to read:

8 **Sec. 06.60.340. Prohibited activities.** In addition to activities prohibited
 9 elsewhere in this chapter or by other law, a person who is a licensee, a person who is
 10 required to be licensed under this chapter, and a person who is licensed under
 11 AS 06.20 may not, in connection with a mortgage loan transaction,

12 (1) misrepresent or conceal a material fact or make a false promise
 13 likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower
 14 to enter into a mortgage loan transaction;

15 (2) pursue a course of misrepresentation through an agent;

16 (3) directly or indirectly employ any scheme, device, or artifice to
 17 defraud or mislead a borrower or lender or to defraud a person;

18 (4) engage in any unfair or deceptive act or practice toward any
 19 person;

20 (5) obtain property by fraud or misrepresentation;

21 (6) solicit or enter into a contract with a borrower that provides, in
 22 substance, that the person subject to this chapter may earn a fee or commission
 23 through using the person's best efforts to obtain a loan, even though a loan is not
 24 actually obtained for the borrower;

25 (7) solicit, advertise, or enter into a contract for specific interest rates,
 26 points, or other financing terms unless the terms are actually available at the time of
 27 soliciting, advertising, or contracting;

28 (8) conduct a business covered by this chapter without holding a valid
 29 license as required under this chapter, or assist a person in the conduct of business
 30 under this chapter without a valid license as required under this chapter;

31 (9) fail to make disclosures as required by this chapter or by another

1 applicable state or federal statute, including regulations adopted under the statute;

2 (10) fail to comply with this chapter or regulations adopted under this
3 chapter or fail to comply with another state or federal statute, including regulations
4 adopted under the statute, applicable to a business authorized or conducted under this
5 chapter;

6 (11) make, in any manner, false or deceptive statements or
7 representations, including statements or representations about rates, points, or other
8 financing terms or conditions, or engage in bait and switch advertising;

9 (12) negligently make a false statement or knowingly omit a material
10 fact in connection with information or reports filed with the department or the registry
11 or in connection with an investigation conducted by the department;

12 (13) make a payment, threat, or promise, directly or indirectly, to a
13 person for the purposes of influencing the independent judgment of the person in
14 connection with a mortgage loan, or make a payment, threat, or promise, directly or
15 indirectly, to an appraiser of a property, for the purpose of influencing the independent
16 judgment of the appraiser with respect to the value of the property;

17 (14) collect, charge, attempt to collect, attempt to charge, or use or
18 propose an agreement purporting to collect or charge a fee prohibited by this chapter;

19 (15) cause or require a borrower to obtain property insurance coverage
20 in an amount that exceeds the replacement cost, as established by the property insurer,
21 of the improvements;

22 (16) improperly refuse to issue a satisfaction of a mortgage loan;

23 (17) fail to account for or deliver to a person money, a document, or
24 another thing of value obtained in connection with a mortgage loan, including money
25 provided for a real estate appraisal or a credit report, if the person is not entitled to
26 retain the money under the circumstances;

27 (18) pay, receive, or collect, in whole or in part, a commission, fee, or
28 other compensation for brokering a mortgage loan in violation of this chapter,
29 including a mortgage loan brokered by an unlicensed person;

30 (19) fail to disburse money in accordance with a written commitment
31 or agreement to make a mortgage loan;

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(20) engage in a transaction, practice, or course of business that is not engaged in by the person in good faith or fair dealing or that constitutes a fraud on a person in connection with the brokering, making, purchase, or sale of a mortgage loan;

(21) influence or attempt to influence, through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan; this paragraph does not prohibit a person from asking an appraiser to

(A) consider additional appropriate property information;

(B) provide further detail, substantiation, or explanation for the appraiser's value determination; or

(C) correct errors in the appraisal report;

(22) make a false or misleading statement in a mortgage loan commitment or prequalification letter, or omit material information necessary to make the statements made not misleading, if the person knew or reasonably should have known the statement was false or misleading or the omission consisted of material information necessary to make the statements made not misleading;

(23) engage in a practice or course of business in which the ultimate rates, terms, or costs of mortgage loans are materially worse for the borrower than they are represented to be in the first good faith estimates the person provides to the borrower, unless

(A) the person's generally published or advertised rates, terms, or costs, if any, change for a borrower's loan program; or

(B) new or changed information from the borrower makes it necessary to change the loan program offered to the borrower;

(24) represent that the person has a license, registration, title, certification, sponsorship, approval, status, affiliation, or connection that the person does not have;

(25) engage in unfair, deceptive, or fraudulent advertising; or

(26) authorize, direct, plan, or aid in the publishing, distribution, or circulation of a materially false statement or a material misrepresentation concerning the licensee's business or concerning mortgage loans originated in the course of the

1 licensee's business in this or another state.

2 * Sec. 48. AS 06.60.360 is amended by adding a new subsection to read:

3 (f) In this section, "escrow account" means an account

4 (1) to which a borrower makes payments for obligations related to the
5 real property that is the subject of a residential mortgage loan of the borrower;

6 (2) held by a third person; and

7 (3) from which the third person identified in (2) of this subsection
8 disburses money in accordance with a written agreement to pay obligations related to
9 the real property that is the subject of a residential mortgage loan of the borrower.

10 * Sec. 49. AS 06.60.370 is amended to read:

11 **Sec. 06.60.370. Criminal penalties [LIABILITY OF LICENSEE OR**
12 **SMALL MORTGAGE LENDER].** (a) The department may report a violation
13 [VIOLATIONS] of (b) - (e) of this section to the attorney general, who may institute
14 the proper proceedings to enforce the criminal penalties provided in (b) - (e) of this
15 section.

16 (b) A person [, INCLUDING A SMALL MORTGAGE LENDER,] who
17 knowingly provides false or misleading information to the department that is material
18 under this chapter is guilty of a class A misdemeanor.

19 (c) A [LICENSEE, PERSON WHO IS A SMALL MORTGAGE LENDER,
20 OR] person [WHO IS EXEMPT UNDER AS 06.60.015] who knowingly fails to
21 account for or deliver to a person money, deposits, or checks or other forms of
22 negotiable instruments in violation of the provisions of this chapter is guilty of a class
23 A misdemeanor.

24 (d) A licensee [OR A SMALL MORTGAGE LENDER] who knowingly fails
25 to disburse money belonging to the borrower without just cause is guilty of a class A
26 misdemeanor.

27 (e) Unless the person is exempt from licensing under this chapter, a
28 person [A MORTGAGE LENDER, MORTGAGE BROKER, OR ORIGINATOR]
29 who knowingly operates in this state as a mortgage lender, mortgage broker, or
30 mortgage loan originator without a license issued under this chapter [OR
31 WITHOUT BEING REGISTERED UNDER AS 06.60.017 AND IS NOT EXEMPT

1 UNDER AS 06.60.015] is guilty of a class A misdemeanor.

2 * **Sec. 50.** AS 06.60.400 is repealed and reenacted to read:

3 **Sec. 06.60.400. Cease and desist proceedings.** (a) Notwithstanding
4 AS 06.01.030(d) and (e), if the department finds, after notice and opportunity for a
5 hearing, that a person has violated, is violating, or is about to violate any provision of
6 this chapter, a regulation adopted under this chapter, or an order issued under this
7 chapter, the department may publish findings and enter an order requiring the person
8 to cease and desist from committing or causing the violation and any future violation
9 of the same provision or regulation. An order may, in addition to requiring a person to
10 cease and desist from committing or causing a violation, require the person to comply,
11 or to take steps to effect compliance, with a provision or regulation, on terms and
12 conditions and within a time, as the department may specify in the order. An order
13 may require future compliance or steps to result in future compliance, either
14 permanently or for a period of time, as the department may specify.

15 (b) Notwithstanding AS 06.01.030(d) and (e), if the department determines
16 that the alleged violation or threatened violation is likely to result in significant
17 dissipation or conversion of assets, significant harm to consumers, or substantial harm
18 to the public interest before the completion of cease and desist proceedings, the
19 department may enter a temporary order requiring the respondent to cease and desist
20 from the violation or threatened violation and to take action to prevent the violation or
21 threatened violation and to prevent dissipation or conversion of assets, significant
22 harm to consumers, or substantial harm to the public interest as the department
23 determines appropriate pending completion of the proceedings. A temporary order
24 may be entered only after notice and opportunity for a hearing, unless the department
25 determines that notice and hearing before entry would be impracticable or contrary to
26 the public interest. A temporary order becomes effective on service on the respondent
27 and, unless set aside, limited, or suspended by the department or a court of competent
28 jurisdiction, remains effective and enforceable pending the completion of the cease
29 and desist proceedings.

30 * **Sec. 51.** AS 06.60 is amended by adding a new section to read:

31 **Sec. 06.60.405. Review of temporary cease and desist orders.** (a) At any

1 time after the respondent has been served with a temporary cease and desist order
 2 under AS 06.60.400(b), the respondent may apply to the department to have the order
 3 set aside, limited, or suspended. If the respondent has been served with a temporary
 4 cease and desist order entered without a prior hearing, the respondent may, within 10
 5 days after the date on which the order was served, request a hearing on the application,
 6 and the office of administrative hearings shall hold a hearing and render a decision on
 7 the application under AS 44.64.060. A respondent served with a temporary cease and
 8 desist order entered without a prior hearing may not apply to the court except after
 9 hearing and decision by the department on the respondent's application under this
 10 subsection.

11 (b) The commencement of proceedings under this section does not, unless
 12 specifically ordered by the court, operate as a stay of the department's order.

13 (c) In a cease and desist proceeding under this section, the department may
 14 issue an order to prohibit, conditionally or unconditionally, permanently or for a
 15 period of time the department determines; a person who has violated this chapter from
 16 operating as a mortgage lender, mortgage broker, or mortgage loan originator if the
 17 conduct of that person demonstrates unfitness to operate as a mortgage lender,
 18 mortgage broker, or mortgage loan originator.

19 * Sec. 52. AS 06.60.410 is amended to read:

20 **Sec. 06.60.410. Censure, suspension, or bar.** (a) In addition to any other
 21 remedy provided under this chapter, the department may, by order after appropriate
 22 notice and opportunity for a hearing, censure a person, suspend the license of a person
 23 for a period not to exceed 12 months, [SUSPEND THE REGISTRATION OF A
 24 SMALL MORTGAGE LENDER FOR A PERIOD NOT TO EXCEED 12
 25 MONTHS,] or bar a person from a position of employment, management, or control
 26 of a licensee [OR A SMALL MORTGAGE LENDER] if the department finds that

- 27 (1) the censure, suspension, or bar is in the public interest;
- 28 (2) the person has knowingly committed or caused a violation of this
 29 chapter or a regulation adopted under this chapter; and
- 30 (3) the violation has caused material damage to the licensee [, TO THE
 31 SMALL MORTGAGE LENDER,] or to the public.

1 (b) When a person who is the subject of a proposed order under this section
2 receives a notice of the department's intention to issue an order under this section, the
3 person is immediately prohibited from engaging in any activities for which a license
4 [OR REGISTRATION AS A SMALL MORTGAGE LENDER] is required under this
5 chapter.

6 (c) A person who is suspended or barred under this section is prohibited from
7 participating in a business activity of a licensee [OR A SMALL MORTGAGE
8 LENDER] and from engaging in a business activity on the premises where a licensee
9 [OR SMALL MORTGAGE LENDER] is conducting the licensee's [OR SMALL
10 MORTGAGE LENDER'S] business. This subsection may not be construed to prohibit
11 a suspended or barred person from having the person's personal transactions processed
12 by a licensee [OR A SMALL MORTGAGE LENDER].

13 * Sec. 53. AS 06.60.420 is amended to read:

14 Sec. 06.60.420. Civil penalty for violations. (a) Notwithstanding
15 AS 06.01.035, a [A] person [, INCLUDING A SMALL MORTGAGE LENDER,]
16 who violates a provision of this chapter, or a regulation adopted or an order issued
17 under this chapter, is liable for a civil penalty not to exceed \$10,000 for each violation.

18 (b) The remedies provided by this section and by other sections of this chapter
19 are not exclusive and may be sought [APPLIED] in combination with other remedies
20 to enforce the provisions of this chapter.

21 * Sec. 54. AS 06.60.430(a) is amended to read:

22 (a) The department may treat a licensee [OR A SMALL MORTGAGE
23 LENDER] as a financial institution under AS 06.01 when applying the enforcement
24 provisions of AS 06.01.

25 * Sec. 55. AS 06.60.430(c) is amended to read:

26 (c) If the department determines that a licensee [, A SMALL MORTGAGE
27 LENDER,] or a person acting on behalf of the licensee [OR SMALL MORTGAGE
28 LENDER] is in violation of, or has violated, a provision of this chapter, the
29 department may refer the information to the attorney general and request that the
30 attorney general investigate the violation under AS 45.50.495. The attorney general
31 may enjoin a violation of this chapter and may seek restitution, rescission, and other

1 relief as allowed by law.

2 * Sec. 56. AS 06.60.500 is amended to read:

3 **Sec. 06.60.500. Mortgage loan originator [ORIGINATOR] surety fund.**

4 The mortgage loan originator surety fund is established as a separate account in the
5 general fund. The purpose of the fund is to pay fund claims against mortgage loan
6 originator licensees.

7 * Sec. 57. AS 06.60.510 is amended to read:

8 **Sec. 06.60.510. Composition of fund.** The fund consists of appropriations of
9 payments made by mortgage loan originator licensees under AS 06.60.550, filing fees
10 for fund claims retained under AS 06.60.620, income earned on the investment of the
11 money in the fund, and money deposited in the fund by the department under
12 AS 06.60.740.

13 * Sec. 58. AS 06.60.550(a) is amended to read:

14 (a) A person who applies for or renews a mortgage loan [AN] originator
15 license shall pay to the department, in addition to the fees required by AS 06.60.035, a
16 fund fee established by the department [NOT TO EXCEED \$150].

17 * Sec. 59. AS 06.60.550(d) is amended to read:

18 (d) Notwithstanding (a) of this section, a mortgage loan [AN] originator
19 licensee who obtains an initial a mortgage loan originator license when the
20 department has reduced the fund fee to nothing shall nonetheless pay the [A] fund fee
21 established by regulation [OF \$150] to the department for the first year of the
22 mortgage loan originator license [OR, FOR A MORTGAGE LICENSEE, OF
23 OPERATING AS AN ORIGINATOR].

24 * Sec. 60. AS 06.60.560 is amended to read:

25 **Sec. 06.60.560. Claim for reimbursement.** In addition to any other remedies
26 available to the person, a person may seek reimbursement for a loss suffered in a
27 mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the
28 wrongful conversion of money by a mortgage loan [AN] originator licensee and is
29 eligible to be reimbursed under AS 06.60.500 - 06.60.750 for the loss from money
30 appropriated for that purpose.

31 * Sec. 61. AS 06.60.580 is amended to read:

1 **Sec. 06.60.580. Form and contents of fund claim.** The form for a fund claim
 2 shall be executed under penalty of unsworn falsification in the second degree and
 3 must include

- 4 (1) the name and address of each mortgage loan originator licensee
 5 involved;
- 6 (2) the amount of the alleged loss;
- 7 (3) the date or period of time during which the alleged loss occurred;
- 8 (4) the date when the alleged loss was discovered;
- 9 (5) the name and address of the claimant; and
- 10 (6) a general statement of the facts related to the fund claim.

11 * **Sec. 62.** AS 06.60.600 is amended to read:

12 **Sec. 06.60.600. Filing and distribution of claim.** At least 20 days before a
 13 hearing is held on the fund claim by the office of administrative hearings
 14 (AS 44.64.010), the department shall send a copy of the claim filed with the
 15 department to

- 16 (1) each mortgage loan originator licensee alleged to have committed
 17 the misconduct resulting in the alleged loss;
- 18 (2) the employer of the mortgage loan originator licensee described in
 19 (1) of this section; and
- 20 (3) any other parties involved in the mortgage loan transaction that is
 21 the subject of the fund claim.

22 * **Sec. 63.** AS 06.60.610(a) is amended to read:

23 (a) Within 30 [SEVEN] days after receiving a copy of a fund claim under
 24 AS 06.60.600, a mortgage loan [EACH] originator licensee against whom a [THE]
 25 claim is made may elect to defend the fund claim as a small claims action in district
 26 court under District Court Rules of Civil Procedure if the claim does not exceed the
 27 small claims jurisdictional limit.

28 * **Sec. 64.** AS 06.60.610(b) is amended to read:

29 (b) A mortgage loan [AN] originator licensee who elects under (a) of this
 30 section to defend a fund claim in district court under the small claims rules may not
 31 revoke the election without the consent of the person who filed the fund claim.

1 * **Sec. 65.** AS 06.60.640 is amended to read:

2 **Sec. 06.60.640. Defense of claim.** When the department receives a fund claim,
3 the department shall allow each mortgage loan originator licensee against whom the
4 claim is made an opportunity to file with the department, within seven days after
5 receipt of notification of the fund claim under AS 06.60.600, a written statement in
6 opposition to the fund claim and a request for a hearing.

7 * **Sec. 66.** AS 06.60.650 is amended to read:

8 **Sec. 06.60.650. Standard of proof.** A person who submits a fund claim under
9 AS 06.60.570 bears the burden of establishing by a preponderance of the evidence that
10 the person suffered a loss in a mortgage loan transaction as a result of fraud,
11 misrepresentation, deceit, or the conversion of trust funds by a mortgage loan [AN]
12 originator licensee and the extent of those losses.

13 * **Sec. 67.** AS 06.60.680(b) is amended to read:

14 (b) If the department determines that the claimant has suffered a loss in a
15 mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the
16 wrongful conversion of money by a mortgage loan [AN] originator licensee, the
17 department may award the person who filed the fund claim reimbursement from
18 money appropriated to the fund.

19 * **Sec. 68.** AS 06.60.690 is amended to read:

20 **Sec. 06.60.690. Fund operations.** The department shall deposit into the fund
21 money that the department recovers from a mortgage loan [AN] originator licensee
22 under AS 06.60.745. The department may not consider amounts paid from the fund for
23 hearing or legal expenses when determining the maximum reimbursement to be
24 awarded under AS 06.60.710 or the maximum liability for fund claims under
25 AS 06.60.710.

26 * **Sec. 69.** AS 06.60.700(a) is amended to read:

27 (a) If a fund claim dismissed under AS 06.60.610 results in a monetary award
28 against a mortgage loan [AN] originator licensee, the department may pay, subject to
29 AS 06.60.710 and 06.60.720, any outstanding portion of the small claims judgment
30 from money appropriated to the department for the purpose.

31 * **Sec. 70.** AS 06.60.700(b) is amended to read:

1 (b) Before making payment under (a) of this section, the person who received
2 the award shall file with the department a copy of the final judgment and an affidavit
3 stating that more than 30 days have elapsed since the judgment became final and that
4 the judgment has not yet been satisfied by the mortgage loan originator licensee
5 against whom the award was made.

6 * Sec. 71. AS 06.60.710(b) is amended to read:

7 (b) The maximum liability for fund claims against one mortgage loan
8 originator licensee may not exceed \$50,000.

9 * Sec. 72. AS 06.60.710(c) is amended to read:

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

17 * Sec. 73. AS 06.60 is amended by adding a new section to read:

18 **Sec. 06.60.715. Other rights of claimant.** The rights granted to a claimant
19 under AS 06.60.500 - 06.60.750 do not limit any other cause of action the claimant
20 may have against a mortgage loan originator.

21 * Sec. 74. AS 06.60.745 is amended to read:

22 **Sec. 06.60.745. Reimbursement for expenses.** If the department pays all or a
23 portion of a fund claim against a mortgage loan [AN] originator licensee under
24 AS 06.60.680 or 06.60.700, the department may recover from the mortgage loan
25 originator licensee, in addition to the payment of the fund claim, the expenses incurred
26 by the department to process and otherwise handle the fund claim.

27 * Sec. 75. AS 06.60.750 is amended to read:

28 **Sec. 06.60.750. Disciplinary action against a mortgage loan [AN]**
29 **originator licensee.** Repayment in full of all obligations to the fund does not nullify or
30 modify the effect of disciplinary proceedings brought against a mortgage loan [AN]
31 originator licensee under this chapter.

1 * **Sec. 76.** AS 06.60.800 is amended by adding a new subsection to read:

2 (e) The program administration fees collected under this section shall be
3 separately accounted for and may be appropriated by the legislature to the department
4 for the operation of this chapter.

5 * **Sec. 77.** AS 06.60.850 is amended to read:

6 **Sec. 06.60.850. Publication of disciplinary action.** The department may
7 release, through the Internet, the registry, or other [FOR] publication, [IN A
8 NEWSPAPER OF GENERAL CIRCULATION IN THE LOCALE OF A
9 LICENSEE'S PRINCIPAL OFFICE] notice of disciplinary action taken by the
10 department against a person required to be licensed under this chapter [THE
11 LICENSEE].

12 * **Sec. 78.** AS 06.60.890 is amended to read:

13 **Sec. 06.60.890. Application to Internet activities.** This chapter applies to a
14 person [, INCLUDING A SMALL MORTGAGE LENDER TO THE EXTENT THIS
15 CHAPTER APPLIES TO A SMALL MORTGAGE LENDER,] even if the person is
16 engaging in the activities regulated by this chapter by using an Internet website from
17 within or outside the state.

18 * **Sec. 79.** AS 06.60.900 is amended to read:

19 **Sec. 06.60.900. Applicability of administrative procedures.**
20 Notwithstanding AS 06.01.030(f), the [THE] provisions of AS 44.62 (Administrative
21 Procedure Act) apply to an action of the department to deny, revoke, or suspend a
22 license under this chapter, to censure, suspend, or bar a person under AS 06.60.410, to
23 take other disciplinary action under this chapter, to hold disciplinary hearings, and to
24 issue disciplinary orders.

25 * **Sec. 80.** AS 06.60.905 is amended to read:

26 **Sec. 06.60.905. Untrue, misleading, or false statements.** A person [,
27 INCLUDING A SMALL MORTGAGE LENDER,] may not, in a document filed with
28 the department or in an examination, an investigation, a hearing, or another proceeding
29 under this chapter, make or cause to be made an untrue statement of a material fact, or
30 omit to state a material fact necessary in order to make the statement made, in the light
31 of the circumstances under which it is made, not misleading or false.

1 * **Sec. 81.** AS 06.60.990 is repealed and reenacted to read:

2 **Sec. 06.60.990. Definitions.** In this chapter, unless the context otherwise
3 requires,

4 (1) "borrower" means an individual who receives a mortgage loan;

5 (2) "consumer reporting agency" means a consumer reporting agency
6 that compiles and maintains files on consumers on a nationwide basis; in this
7 paragraph, "consumer reporting agency that compiles and maintains files on
8 consumers on a nationwide basis" has the meaning given in 15 U.S.C. 1681a(p) (Fair
9 Credit Reporting Act);

10 (3) "control" means the power, directly or indirectly, to direct the
11 management or policies of a company, whether through ownership of securities, by
12 contract, or otherwise; an individual is presumed to control a company if the
13 individual

14 (A) is a director, general partner, or executive officer, including
15 chief executive officer, chief financial officer, chief operations officer, chief
16 legal officer, chief credit officer, or chief compliance officer, or occupies a
17 similar position or performs a similar function;

18 (B) directly or indirectly, has the right to vote 10 percent or
19 more of a class of voting security or has the power to sell or direct the sale of
20 10 percent or more of a class of voting securities;

21 (C) in the case of a limited liability company,

22 (i) is a managing member;

23 (ii) is a member who has the right to receive on
24 dissolution, or has contributed, 10 percent or more of the capital of the
25 limited liability company; or

26 (iii) if the limited liability company is managed by
27 elected or appointed managers, is an elected or appointed manager; or

28 (D) in the case of a partnership, has the right to receive on
29 dissolution, or has contributed, 10 percent or more of the capital;

30 (4) "control person" means an individual described in the uniform
31 mortgage lender and mortgage broker application form of the registry who directly or

1 indirectly exercises control over the applicant;

2 (5) "department" means the Department of Commerce, Community,
3 and Economic Development;

4 (6) "depository institution" has the meaning given in 12 U.S.C. 1813
5 (Federal Deposit Insurance Act) and includes a credit union;

6 (7) "dwelling" means a residential structure or mobile home that
7 contains one to four family housing units, or the individual units of condominiums or
8 cooperatives;

9 (8) "federal banking agency" means the Board of Governors of the
10 Federal Reserve System, the Comptroller of the Currency, the director of the Office of
11 Thrift Supervision, the National Credit Union Administration, and the Federal Deposit
12 Insurance Corporation;

13 (9) "fund" means the mortgage loan originator surety fund established
14 under AS 06.60.500;

15 (10) "fund claim" means a claim against the fund;

16 (11) "fund fee" means the fee required to be paid by AS 06.60.550;

17 (12) "individual" means a natural person;

18 (13) "knowingly" has the meaning given in AS 11.81.900(a);

19 (14) "license" means a license issued under this chapter;

20 (15) "licensed mortgage loan originator" means a person who holds a
21 mortgage loan originator license issued under this chapter;

22 (16) "licensee" means a person who holds a license issued under this
23 chapter;

24 (17) "loan processor or underwriter" means an individual who
25 performs clerical or support duties as an employee at the direction of and subject to the
26 supervision and instruction of a person required to be licensed or exempt from
27 licensing under this chapter; in this paragraph, "clerical or support duties" includes,
28 subsequent to the receipt of an application,

29 (A) the receipt, collection, distribution, and analysis of
30 information common for the processing or underwriting of a mortgage loan;
31 and

1 (B) communicating with a consumer to obtain the information
2 necessary for the processing or underwriting of a loan, to the extent that the
3 communication does not include offering or negotiating loan rates or terms or
4 counseling consumers about mortgage loan rates or terms;

5 (18) "mortgage broker" means a person who, for compensation or gain,
6 or in the expectation of compensation or gain, directly or indirectly, by telephone, by
7 electronic means, by mail, through the Internet, in person, or by the person itself or a
8 mortgage loan originator,

9 (A) arranges with a variety of lending sources, including
10 private lenders, institutional investors, or wholesale lenders, to provide
11 financing for mortgage loans; or

12 (B) assists or offers to assist a borrower or potential borrower
13 to obtain financing for a mortgage loan;

14 (19) "mortgage lender"

15 (A) means a person who consummates and funds a mortgage
16 loan and who is named as the payee in the promissory note and as the
17 beneficiary of the deed of trust;

18 (B) does not include a subsequent purchaser of a mortgage loan
19 or an interest in a mortgage loan that is originated by a licensee under this
20 chapter;

21 (20) "mortgage license" means a license issued under this chapter to
22 operate as a mortgage lender or a mortgage broker;

23 (21) "mortgage licensee" means a person who holds a mortgage
24 license;

25 (22) "mortgage loan" means a residential mortgage loan;

26 (23) "mortgage loan originator"

27 (A) means an individual who, for compensation or gain, or in
28 the expectation of compensation or gain,

29 (i) takes a mortgage loan application; or

30 (ii) offers or negotiates terms of a mortgage loan;

31 (B) does not include an individual who is not otherwise

1 described in (A) of this paragraph and who is engaged solely as a loan
2 processor or underwriter on behalf of a person described in (A) of this
3 paragraph, except as provided in AS 06.60.013;

4 (C) does not include an individual who only performs real
5 estate brokerage activities and is licensed or registered under applicable state
6 law, unless the individual is compensated by a lender, a mortgage broker, or
7 another mortgage loan originator, or by an agent of the lender, mortgage
8 broker, or other mortgage loan originator; in this subparagraph, "real estate
9 brokerage activity" means an activity that involves offering or providing real
10 estate brokerage services to the public, including

11 (i) acting as a real estate agent or real estate broker for a
12 buyer, seller, lessor, or lessee of real property;

13 (ii) bringing together parties interested in the sale,
14 purchase, lease, rental, or exchange of real property;

15 (iii) negotiating, on behalf of a party, a portion of a
16 contract relating to the sale, purchase, lease, rental, or exchange of real
17 property other than in connection with providing financing with respect
18 to the transaction;

19 (iv) engaging in an activity for which a person engaged
20 in the activity is required to be registered or licensed as a real estate
21 agent or real estate broker under an applicable law; and

22 (v) offering to engage in an activity, or act in a capacity,
23 described in (i), (ii), (iii), or (iv) of this subparagraph; and

24 (D) does not include a person solely involved in extensions of
25 credit relating to timeshare plans; in this subparagraph, "timeshare plan" has
26 the meaning given in 11 U.S.C. 101 (Bankruptcy Code);

27 (24) "mortgage loan originator license" means a license issued to a
28 person to operate as a mortgage loan originator;

29 (25) "Nationwide Mortgage Licensing System and Registry" has the
30 meaning given in 12 U.S.C. 5102 (Secure and Fair Enforcement for Mortgage
31 Licensing Act of 2008);

1 (26) "nontraditional mortgage product" means a mortgage product
2 other than a 30-year fixed-rate mortgage;

3 (27) "operate" means hold out, do business, offer to provide services,
4 or provide services; in this paragraph, "hold out" means to represent to the public,
5 through advertising or other means of communicating or providing information,
6 including the use of business cards, stationery, brochures, signs, rate lists, or other
7 promotional items, that the person can or will perform an activity for which a license
8 is required under this chapter;

9 (28) "operate in the state" includes operating in the state from a
10 location outside the state or from an Internet website that originates inside or outside
11 the state;

12 (29) "program administration fee" means the fee described under
13 AS 06.60.800(a);

14 (30) "record" means information that is inscribed on a tangible
15 medium or that is stored in an electronic or other medium and is retrievable in
16 perceivable form;

17 (31) "registered mortgage loan originator" means an individual who

18 (A) is a mortgage loan originator and is an employee of

19 (i) a depository institution;

20 (ii) a subsidiary that is owned and controlled by a
21 depository institution and regulated by a federal banking agency; or

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

24 (B) is registered with the registry and maintains a unique
25 identifier with the registry;

26 (32) "registry" means the Nationwide Mortgage Licensing System and
27 Registry;

28 (33) "residential mortgage loan" means a loan that is primarily for
29 personal, family, or household use and that is secured by a mortgage, deed of trust, or
30 other equivalent consensual security interest on a dwelling or residential real estate
31 located in the state; in this paragraph "residential real estate" means real property on

1 which a dwelling is constructed or intended to be constructed;

2 (34) "unique identifier" means a number or other identifier assigned to
3 a licensee by protocols established by the registry.

4 * **Sec. 82.** AS 06.60.995 is amended to read:

5 **Sec. 06.60.995. Short title.** This chapter may be known as the Alaska Secure
6 and Fair Enforcement for Mortgage Licensing Act of 2010 [MORTGAGE
7 LENDING REGULATION ACT].

8 * **Sec. 83.** AS 12.62.400 is amended to read:

9 **Sec. 12.62.400. National criminal history record checks for employment,**
10 **licensing, and other noncriminal justice purposes.** To obtain a national criminal
11 history record check for determining a person's qualifications for a license, permit,
12 registration, employment, or position, a person shall submit the person's fingerprints to
13 the department with the fee established by AS 12.62.160. The department may submit
14 the fingerprints to the Federal Bureau of Investigation to obtain a national criminal
15 history record check of the person for the purpose of evaluating a person's
16 qualifications for

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

20 (2) licensure as a mortgage lender, a mortgage broker, or a mortgage
21 loan [AN] originator under AS 06.60;

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

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

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

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

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

30 (8) a teacher certificate under AS 14.20;

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

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

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

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

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

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

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

12 * **Sec. 84.** AS 12.62.400 is amended by adding a new subsection to read:

13 (b) Notwithstanding (a) of this section, an applicant for a license under
14 AS 06.60 may submit the applicant's fingerprints to the Nationwide Mortgage
15 Licensing System and Registry. In this subsection, "Nationwide Mortgage Licensing
16 System and Registry" has the meaning given in 12 U.S.C. 5102.

17 * **Sec. 85.** AS 06.60.017, 06.60.025, 06.60.065, 06.60.070, 06.60.075, 06.60.090(i),
18 06.60.097(b), 06.60.105, 06.60.145, 06.60.150, 06.60.440, 06.60.540, 06.60.810, and
19 06.60.870 are repealed.

20 * **Sec. 86.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 **TRANSITION: EXISTING LICENSES ISSUED UNDER FORMER AS 06.60;**
23 **LICENSES AFTER JULY 1, 2010.** (a) A person holding a valid license issued under former
24 AS 06.60, on or before July 1, 2010, may continue to operate under that license until the
25 license expires, is revoked, or is suspended, and, except as provided by (c) of this section, this
26 Act, including its provisions on expiration, renewal, prohibitions, revocation, suspension, and
27 enforcement, applies to the license and to the person's operation under the license.

28 (b) A person who is not licensed under former AS 06.60 before July 1, 2010, and files
29 an application for licensing under this Act on or after July 1, 2010, shall comply with the
30 requirements of this Act to receive a license under this Act.

31 (c) AS 06.60.027, as repealed and reenacted by sec. 8 of this Act, does not apply to

1 the renewal of a mortgage license valid on July 1, 2010, except for a mortgage license
2 application amendment submitted on or after July 1, 2010, requesting approval of a change of
3 a control person. In this subsection, "control person" and "mortgage license" have the
4 meanings given in AS 06.60.990.

5 * Sec. 87. The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 TRANSITION: TEMPORARY FEES AND BOND AMOUNT. (a) If the regulations
8 adopted by the Department of Commerce, Community, and Economic Development under
9 sec. 88 of this Act do not take effect July 1, 2010, then, during the period of July 1, 2010,
10 until the effective date of the regulations adopted under sec. 88 of this Act,

11 (1) notwithstanding AS 06.60.035(a), as amended by sec. 9 of this Act, the
12 application fee under AS 06.60.035(a)(1), as amended by sec. 9 of this Act, shall be \$250, and
13 the license fee under AS 06.60.035(a)(2), as amended by sec. 9 of this Act, shall be \$500;

14 (2) notwithstanding AS 06.60.045(a), as amended by sec. 14 of this Act, the
15 amount of the bond under AS 06.60.045(a), as amended by sec. 14 of this Act, shall be
16 \$25,000;

17 (3) notwithstanding AS 06.60.550(a), as amended by sec. 58 of this Act, the
18 amount of the fund fee under AS 06.60.550(a), as amended by sec. 58 of this Act, shall be
19 \$150; and

20 (4) notwithstanding AS 06.60.550(d), as amended by sec. 59 of this Act, the
21 amount of the fund fee under AS 06.60.550(d), as amended by sec. 59 of this Act, shall be
22 \$150.

23 * Sec. 88. The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 TRANSITION: REGULATIONS. (a) The Department of Commerce, Community,
26 and Economic Development may adopt regulations necessary to implement this Act. The
27 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,
28 2010.

29 (b) The department shall notify the revisor of statutes of the date on which the
30 regulations take effect.

31 * Sec. 89. Section 88 of this Act takes effect immediately under AS 01.10.070(c).

1

* **Sec. 90.** Except as provided in sec. 89 of this Act, this Act takes effect July 1, 2010.



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Banking and Securities

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

Page Two
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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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

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

Division of Banking and Securities

Page Three
Mortgage Lending Bill Draft
December 21, 2009

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 updated 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.nationwidelicencingystem.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.

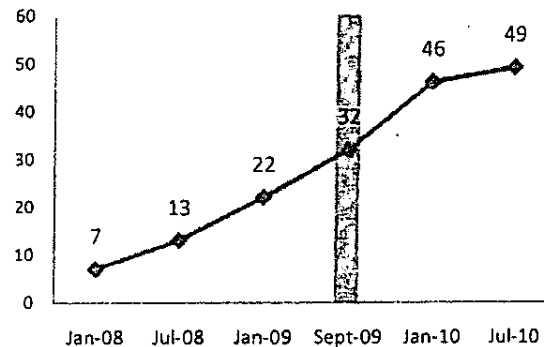
State SAFE Legislative Activity



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



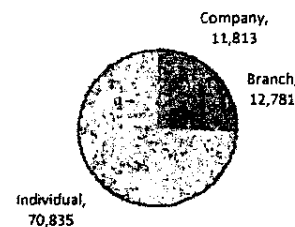
Testing and Education Standards

- 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

Senate Bill 279

Regulation of Mortgage Lending

Lorie Hovanec, Director
Division of Banking and Securities

Purpose: to bring Alaska's Mortgage Lending Regulation Act into compliance with federal Public Law 110-289, Title V, Secure and Fair Enforcement for Mortgage Licensing Act (the SAFE Act).

Two Requirements: The SAFE Act requires each state to: (1) license mortgage loan originators through a nationwide database and (2) amend its statutes to meet minimum licensing standards. States still review the uniform applications submitted by applicants, and state regulators issue the licenses.

Alaska met the first requirement last year, by joining the Nationwide Mortgage Licensing System and Registry (the registry) and began licensing through the registry on August 1, 2009.

If Alaska does not comply with the second requirement, through the passage of SB 279, then the SAFE Act mandates that the U.S. Dept. of Housing and Urban Development begin enforcing the required licensing standards. The effective date of this bill is July 1, 2010.

Major Changes to Alaska Law:

- Renewals changed from biennial to annual
- Eliminates the small mortgage lender/originator exemption
- Allows fingerprint cards to be sent to the registry, rather than the Department of Public Safety for submittal to the FBI for background checks
- Permits fees to be set in regulation
- Requires 20 hours of pre-licensing education
- Authorizes the division to issue a provisional license if fingerprint card processing is excessively delayed, but all other requirements are met
- Omits references to paper licenses, in anticipation of going paperless, due to availability of registry data
- Permits branch office registration
- Modifies continuing education requirements from 24 hours every 2 years, to 8 hours annually

Fiscal Note

Adds funding for the following expenses:

- One additional occupational licensing position (\$65,000 per year) and in the contractual line \$3,000 for costs and supplies associated with this position
- Increased travel to out-of-state exams, due to the additional number of licensees in other states doing business in Alaska particularly over the Internet
- Annual membership fee for AARMR (\$750 annually)
- State background check fee (\$5250) which the division must upfront until fee is collected from licensee for deposit into the general fund. The licensee will pay the federal background check fee directly.

Revenue is expected to increase substantially, due to expansion of licensee definition to include loan modification and servicing companies, as well as the required change to annual license renewal.



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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Phone 202.624.5400 Fax 202.737.1069

Website www.ncsl.org

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 that reads "Joe Hackney". The signature is written in a cursive style with a large, looping "J" and "H".

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

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/smlcact.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.

States may not, however, enact legislation, promulgate regulations, or otherwise impose requirements that would frustrate the objectives of the SAFE Act, keeping in mind that the SAFE Act's primary objectives include provision of a comprehensive licensing and supervisory system with uniform application and reporting requirements.

B. Definition of Loan Originator

Section 1503(3)(A)(i) of the SAFE Act defines "loan originator" as "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." Section 1503(3)(B), entitled "Other Definitions Relating to Loan Originator" provides "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.

" HUD interprets "application" to include any request from a borrower, however communicated, for an offer (or in response to a solicitation of an offer) of residential mortgage loan terms, as well as the information from the borrower that is typically required in order to make such an offer. HUD interprets "tak[ing]" an application to mean receipt of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower, whether the application is received directly or indirectly from the borrower.

Since it generally would not be possible for an individual to offer to or negotiate residential mortgage loan terms with a borrower without first receiving the request from the borrower (including a positive response to a solicitation of an offer) as well as the information typically contained in a borrower's application, HUD considers the definition of loan originator to encompass any individual who, for compensation or gain, offers or negotiates pursuant to a request from and based on the information provided by the borrower. Such an individual would be included in the definition of loan originator, regardless of whether the individual takes the request from the borrower for an offer (or positive response to an offer) of residential mortgage loan terms directly or indirectly from the borrower.

The SAFE Act also describes activities in the residential mortgage process that are excluded from the definition of "loan originator." Activities that are excluded are those that pertain to administrative or clerical tasks; real estate brokerage activities by individuals licensed or registered by a state to undertake real estate brokerage activities unless a person is compensated by a loan originator, loan processing or underwriting undertaken under the direction and supervision of a state-licensed loan originator or registered loan originator; and those individuals solely involved in extensions of credit relating to timeshare plans.

HUD interprets an individual who "takes a residential mortgage loan application" to exclude an individual who performs purely administrative or clerical tasks, such as physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower. This interpretation is consistent with the exclusion defined in section 1503(3)(C) of the SAFE Act. On the other hand, HUD views activity that involves assisting or advising a prospective borrower in the completion of an application extending beyond purely administrative or clerical tasks falls within coverage of the SAFE Act provided by section 1503(3)(B). As a result, an individual who offers or negotiates residential mortgage loan terms for compensation or gain could not avoid applicability of the SAFE Act standards by having another person or entity take the application from the prospective borrower and then pass the application to the individual. A state licensing and registration system that permits such individuals to avoid compliance with SAFE Act standards would be determined by HUD to be not in compliance with the SAFE Act. A state may clarify that such individuals are not exempt from licensing requirements. The MSL provides one approach in making this clarification in section XX.XXX.030(6).

Notwithstanding the broad definition of "loan originator" in the SAFE Act, there are some limited contexts where offering or negotiating residential mortgage loan terms would not make an individual a loan originator. The provision in the definition that loan originators are individuals who take an "application" implies a formality and commercial context that is wholly absent where an individual offers or negotiates terms of a residential mortgage loan with or on behalf of a member of his or her immediate family. State legislation that excludes from licensing and registration requirements an individual who offers or negotiates terms of a residential mortgage loan only with or on behalf of an immediate family member will not be found to be out of compliance with the SAFE Act merely because of such exclusion. The MSL includes this exclusion in section XX.XXX.040(3)(b).

The commercial context implied by the taking of an "application" is also absent where an individual seller provides financing to a buyer pursuant to the sale of the seller's own residence. The frequency with which a particular seller provides financing is so limited that HUD's view is that Congress did not intend to require such sellers to obtain loan originator licenses. Accordingly, state legislation that excludes from licensing and registration requirements an individual who offers or negotiates terms of a residential mortgage loan only to the buyer or prospective buyer of the seller's residence will not be found to be out of compliance with the SAFE Act. The MSL includes this exclusion in section XX.XXX.040(3)(c).

Additionally, the definition generally would not apply to, for example, a licensed attorney who negotiates terms of a residential mortgage loan with a prospective lender on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, mortgage broker, or other mortgage loan originator or by an agent of such lender, mortgage broker, or other loan originator. In such cases, the duties of loyalty, competence, and diligence owed by the attorney to his or her client are significant. HUD views the SAFE Act's requirements for registration and licensing as not applying in this context, which is distinguished from the commercial context contemplated in the SAFE Act. The MSL includes this exclusion in section XX.XXX.040(3)(d).

C. Definition of "Dwelling"

The SAFE Act's definition of "residential mortgage loan" includes a loan secured by a consensual security interest on a "dwelling" and cross-references the definition of dwelling in section 103(v) of the Truth in Lending Act (TILA) (15 U.S.C. 1601 note).

Regulation Z, which implements TILA, defines dwelling to mean "a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence." (12 CFR 226.2(a)(19).) Since both the SAFE Act and TILA address consumer protections for borrowers in housing finance transactions, HUD finds that the same interpretation applies under the SAFE Act. In addition, HUD interprets "mobile home" to include a manufactured home, as defined in the National Manufactured Housing Construction and Safety Standards Act of 1974. (42 U.S.C. 5402(6).)

D. Delayed Effective Date of Requirement to Obtain and Maintain a License

Under the SAFE Act, HUD may determine the acceptability of states' licensing and registration systems and of their participation in the NMLS as early as July 31, 2009, or July 31, 2010, as applicable. As a result, states are facing tight deadlines before they must enact legislation and implement systems to carry out licensing and registration requirements. To meet the SAFE Act's licensing requirements, NMLSR will have to develop tests and approve educational courses, mortgage loan originators will have to comply with testing, education, and bonding requirements, and states will have to evaluate the records of thousands of applicants.

Although a state should enact legislation or promulgate regulations by the applicable deadline, HUD's position is that Congress did not intend for states to require all mortgage loan originators to be licensed in accordance with the SAFE Act's standards immediately upon enactment of the state's legislation or issuance of regulations. Such a requirement could cause a massive disruption in the housing finance industry at a time when millions of Americans may be seeking to refinance their existing mortgages or to purchase a new home. The ability of loan originators to facilitate such transactions is critical to ameliorate the current conditions in the housing market, but in many states, individuals currently performing loan originations may not be able to meet the educational, testing, and background check requirements by the time required legislation or regulations become effective. In addition, HUD is aware that some states already require licensure of loan originators, and that some individuals in those states will hold licenses that do not expire until as late as December 2010. Nonetheless, the provision for HUD to enforce the SAFE Act's standards in any state that fails to implement these standards reflects the underlying statutory concern that loan originators who do not meet these standards pose a significant risk to borrowers and the housing finance system. As a result, any period during which loan originators may operate without a SAFE Act-compliant license must be only as long as necessary for substantial numbers of qualified loan originators to obtain licenses.

Accordingly, HUD will not determine that a state's legislation is not in compliance with the SAFE Act merely because the legislation or regulations provide for a reasonable period following enactment for certain loan originators to be licensed under the new requirements. Considering the education, testing, and background check standards that license applicants must meet, HUD views a reasonable delay, with respect to individuals who do not already possess a valid loan originator license, is one which does not extend past July 31, 2010. Such a delay generally provides one year from state enactment of legislation for individuals to come into compliance with applicable requirements. (HUD has determined that all state legislatures that meet only biennially meet in 2009, which means that these states will have the opportunity to enact SAFE Act compliant legislation by July 31, 2009.) For individuals who possess licenses granted under a system that was in place prior to the SAFE Act-compliant system, HUD views a reasonable delay is one that does not extend past December 31, 2010. This effective date will accommodate individuals with two-year licenses that were granted or renewed as late as December 2008, and also synchronizes with the NMLSR's uniform annual license expiration date of December 31. The MSL provides in section L26-(1)(2) for these delayed effective dates for the state licensing requirement, and provides that these effective dates could be further extended only with HUD's approval. HUD may approve a later date only upon a state's demonstration that substantial numbers of loan originators (or of a class of loan originators) who require a state license face unusual hardship, through no fault of their own or of the state government, in complying with the standards required by the SAFE Act to be in the state legislation and in obtaining state licenses within one year.

E. State of Licensure

Section 1504(a) of the SAFE Act prohibits an individual from "engag[ing] in the business of a loan originator" without first obtaining a registration or state license. HUD interprets this provision to mean that an individual must comply with licensing and registry requirements of a state in order to engage in the business of a loan originator with respect to any residential property in that state, regardless of whether the individual or the prospective borrower is located in the state. This interpretation ensures that each state is able to establish and enforce the provisions of its SAFE Act licensing system and prevents an individual from circumventing a state's requirements simply by physically locating outside of the state and conducting business by telephone or other means. This interpretation, however, does not affect the level of reciprocity a state may grant to another state's determination that its own SAFE Act-compliant licensing requirements have been met. This interpretation promotes clarity by unambiguously determining which state's license is required for a given transaction. The MSL incorporates this

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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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](#)

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.

Sec. 1503. Definitions.

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Sec. 1510. Fees.

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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.

disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas; assistance for emergency protective measures (Public Assistance Category B), including snow removal for any continuous 48-hour period during or proximate to the incident period in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Bennett, Bulte, Corson, Dewey, Haakon, Harding, Jackson, Meade, Mellette, Perkins, Shannon, Todd, and Ziebach Counties and the portions of the Pine Ridge Reservation, Rosebud Reservation, Cheyenne River Reservation, and Standing Rock Reservation that lie within the designated counties for Public Assistance.

Butte and Perkins Counties for emergency protective measures (Category B), including snow removal assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties and Tribal Reservations within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.051, Cora

Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,
Administrator, Federal Emergency
Management Agency.

[FR Doc. E8-31291 Filed 1-2-09; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Amspec Services LLC, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Amspec Services LLC, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Amspec Services LLC, 22010 South Wilmington Avenue Suite #304, Carson, CA 90745, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.lahq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The approval of Amspec Services LLC, as commercial gauger became effective on October 22, 2008. The next triennial inspection date will be scheduled for October 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 24, 2008.

Ira S. Reese,
Executive Director, Laboratories and
Scientific Services.
[FR Doc. E8-31289 Filed 1-2-09; 8:45 am]
BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

[Docket No. FR-5271-N-01]

S.A.F.E. (SAFE) Mortgage Licensing Act; Notification of Availability of Model Legislation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators have developed model legislation to assist states in meeting the minimum requirements of the SAFE Mortgage Licensing Act. HUD has reviewed this model legislation and finds that it meets the minimum requirements of the SAFE Mortgage Licensing Act. The model legislation is available on HUD's Web site at <http://www.hud.gov/offices/hsg/sfh/reguprog.cfm>, along with HUD commentary on certain provisions of the statute, and the model legislation.

FOR FURTHER INFORMATION CONTACT: For information contact William Matchneer, Office of Regulatory Affairs and Manufactured Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-8000; telephone number 202-708-6401. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

The Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act or Act) was enacted into law on July 30, 2008, as part of the Housing and Economic Recovery Act of 2008. This new law encourages the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish a nationwide mortgage

licensing system for the residential mortgage industry for the purpose of providing (1) uniform state-licensing application and reporting requirements for residential mortgage loan originators, and (2) a comprehensive database by which such mortgage loan originators may be found and tracked. This new law also imposes the obligation on states to adopt mortgage licensing requirements that meet the minimum standards specified in the law in lieu of HUD establishing and maintaining a licensing system for loan originators.

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 for that state only, 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. While states are charged with enacting licensing standards that meet the requirements of the SAFE Act, overall responsibility for interpretation, implementation, and compliance of the SAFE Act rests with HUD.

To assist states in complying with the requirements of the SAFE Act, the CSBS and AARMR have developed model-legislation. This legislation was developed through outreach to and consultation with the states and industry. HUD has reviewed this model legislation and finds that it meets the minimum requirements of the SAFE Act. State legislation that follows the provisions of the model state law will not be determined by HUD to be noncompliant with SAFE Act.

The model legislation, reviewed by HUD and found to be compliant with the SAFE Act, is available on HUD's Web site at <http://www.hud.gov/offices/hsg/sfh/reguprog.cfm>. Additionally, the Web site provides HUD commentary on certain provisions of the SAFE Act, and the model legislation.

Dated: December 24, 2008.

Brian D. Montgomery.

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E8-31389 Filed 1-2-09; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[FWS-R1-R-2008-N0233; 1265-0000-10137-S3]

Papahānaumokuākea Marine National Monument, Hawai'i

AGENCIES: Fish and Wildlife Service (FWS), Interior; National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of the monument management plan, environmental assessment, and findings of no significant impact.

SUMMARY: This notice advises the public that NOAA, FWS, the State of Hawai'i's Department of Land and Natural Resources (DLNR), and the Office of Hawai'ian Affairs have completed a Monument Management Plan (MMP) for the Papahānaumokuākea Marine National Monument (Monument) located in the Northwestern Hawai'ian Islands (NWHI). The Monument's resources, and current and future management activities, are described in the MMP and associated environmental assessment (EA). The NOAA and FWS developed separate findings of no significant impact (FONSI) to address each agency's MMP/EA findings. Both FONSI are available with the MMP/EA.

DATES: The MMP/EA and FONSI are now available. Implementation of the MMP is effective and may begin immediately.

ADDRESSES: Printed copies of the MMP/EA and FONSI are available for viewing at NOAA's Papahānaumokuākea Marine National Monument office at 6600 Kalaniana'ole Highway, Suite 300, Honolulu, HI 96825, and may be obtained by visiting or writing to the office or by telephone at (808) 397-2660. These documents are also available on compact disk from the Monument, and for viewing and downloading on the Internet at <http://papahānaumokuākea.gov>, and <http://www.fws.gov/pacific/planning/>. Additional documents developed as

part of the MMP/EA planning process that specifically support FWS programs and environmental compliance requirements are also available on <http://www.fws.gov/pacific/planning/>.
FOR MORE INFORMATION CONTACT: Susan White, FWS Superintendent, phone (808) 792-9480.

SUPPLEMENTARY INFORMATION:

Monument Background

On June 15, 2006, President George W. Bush established the NWHI Marine National Monument by issuing Presidential Proclamation 8031 (Proclamation) (71 FR 36443, June 26, 2006) under the authority of the Antiquities Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the Act).

On December 8, 2006, the Secretaries of Commerce and the Interior and the Governor of Hawai'i signed a Memorandum of Agreement to jointly manage Federal and State lands and waters within the Monument as Co-Trustees and to collectively protect, conserve, and enhance the Monument's marine and terrestrial habitats and resources.

On February 28, 2007, President Bush amended the Proclamation to rename the Monument the Papahānaumokuākea Marine National Monument to reflect the region's significance in Native Hawai'ian culture (72 FR 10031, March 6, 2007).

Location, Size, and Federal and State Resource Management

Proclamation 8031 reserves all lands and interests in lands owned or controlled by the Government of the United States in the NWHI, including emergent and submerged lands and waters out to a distance of approximately 50 nautical miles from the islands.

The Monument is approximately 100 nautical miles wide and 1,200 miles in length, and extends around coral islands, seamounts, banks, and shoals. The Monument encompasses the following areas.

- Northwestern Hawai'ian Islands Coral Reef Ecosystem Reserve.
- Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial.
- Hawai'ian Islands National Wildlife Refuge.
- Hawai'i State Seabird Sanctuary at Kure Atoll.
- State of Hawai'i's Northwestern Hawai'ian Islands Marine Refuge.

The NOAA maintains responsibility for managing the NWHI Coral Reef Ecosystem Reserve, included within the Monument, and has primary



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Banking and Securities

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

550 W. 7th Avenue, Suite 1940, Anchorage, Alaska 99501
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