

Date of Hearing: June 20, 2011

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

SB 217 (Vargas) – As Amended: June 16, 2011

SENATE VOTE: Not relevant

SUBJECT: California Finance Lenders Law: exemptions: mortgage loan originators.

SUMMARY: Provides for several exemptions and clarifications regarding the Secure and Fair Enforcement of Mortgage Licensing Act of 2008 (SAFE Act). Specifically, this bill:

- 1) Finds that an individual who acts as a mortgage loan originator for five or fewer residential mortgage loans during a calendar year shall not be deemed a mortgage loan originator and shall not be required to obtain an originator's license if the following are met:
  - a) The individual acts as an originator for a single licensee;
  - b) The licensee on whose behalf the individual acts, brokers loans exclusively to a single depository institution; and,
  - c) Before authorizing the origination of mortgage loans, the licensee submits the name of the individual acting as originator to the Department of Corporations (DOC) and agrees in writing to be accountable for the actions of the individual in connection with the loan origination.
- 2) Provides that any licensee that becomes aware of an individual who is originating a residential mortgage loan on its behalf and has exceeded the five loans per year threshold to notify the commissioner of DOC and direct the individual to cease mortgage loan origination activity until he or she obtains a mortgage loan originators license.
- 3) States that the exclusion from licensing of individuals making five or fewer loans shall not apply if the Director of the federal Consumer Financial Protection Bureau or a court of competent jurisdiction makes a final and specific determination that the exclusion from licensing does not comply with the SAFE Act.
- 4) Provides that persons not subject to the California Finance Lenders Law (CFLL) may apply to the commissioner of DOC for an exempt company registration for the purpose of sponsoring one or more individuals required to be licensed as mortgage loan originators pursuant to the SAFE Act. Additionally, finds that a mortgage loan originator subject to this provision must meet the following requirements:
  - a) The person to be licensed as a mortgage loan originator must be covered under an exclusive written contract with, and originate mortgage loans solely on behalf of, that exempt person; and,
  - b) The person to be licensed must hold a license from the Insurance Commissioner as an insurance producer for an insurer that controls, is controlled by, or is under common

control with that exempt person.

- 5) Mandates that an exempt person must comply with all rules and orders that the commissioner deems necessary to ensure compliance with the SAFE Act and shall pay an annual registration fee established by the commissioner.

#### EXISTING LAW

Title V of the Federal Housing Finance Regulator Reform Act, signed by President Bush on July 30, 2008 established the SAFE Act requiring the establishment of a national registry for mortgage loan originators and required all the states to establish requirements to carry out SAFE Act licensing and registration. California's SAFE Act licensing framework was put into law by SB 36 (Calderon), Chapter 160, Statutes of 2009. In California, employees of those licensees licensed under the CFLL and California Residential Mortgage Lending Act that meet the definition of "mortgage loan originator" must obtain licenses from DOC. Persons licensed by the Department of Real Estate under the Real Estate Law must obtain a mortgage loan originator license endorsement if they meet the "mortgage loan originator" definition.

FISCAL EFFECT: Unknown

#### COMMENTS:

This bill attempts to address two issues relating to implementation of the SAFE Act. The first issue contained in section 1 of the bill seeks to provide a de minimis exception that resembles Safe Act regulations passed by federal banking regulators for depository institutions. Under these federal regulations employees of depository institutions are allowed to originate up to five residential mortgage loans on behalf of its deposit institutions employer in any twelve month period without having to register as a mortgage loan originator. This bill provides the exempt employee (an employee making no more than five loans in a year) must be working on behalf of a CFL licensee and which would broker the loan under an exclusive arrangement with a depository institution.

The above mentioned provision is proposed on behalf of Primerica Life Insurance Company. Primerica Life Insurance Company holds a CFLL license. From time to time, its life insurance agents take mortgage loan applications from prospective borrowers. Primerica Life then sends those applications exclusively to Citibank Trust, an affiliated depository institution which also holds a CFLL license. As currently structured, Primerica Life Insurance Company is acting as a CFLL licensee brokering to another CFLL licensee.

When taking mortgage loan applications on behalf of Primerica Life Insurance Company, Primerica's agents are acting in the capacity of mortgage loan originators, and are required to be licensed as such. However, because the primary business of these agents involves the sale of insurance, and because they take very few mortgage loan applications during the course of a given year, Primerica and Citigroup (which owns 50% of Primerica) are seeking an exemption from the requirement that Primerica's agents obtain mortgage loan originator licenses. Primerica's proposal would exempt those of its agents originating five or fewer residential mortgage loans in a calendar year from the requirement to obtain mortgage loan originator licenses, provided the agents originate those loans solely on behalf of a single licensed finance

lender, which, in turn, brokers those mortgage loans, in accordance with the CFLL, to a single depository institution.

The second section of this bill seeks to address an issue facing State Farm Bank, a division of State Farm Insurance Company. State Farm contracts with independent agents that write insurance on behalf of State Farm Insurance. These agents also may originate mortgages on behalf of State Farm Bank. These agents in engaging in mortgage loan originations meet the definition of "mortgage loan originator" under the SAFE Act and as such fall within the registration requirements. However, because they are independent agents and not employees of State Farm, they cannot obtain SAFE Act registration. SB 217 would allow State Farm Bank, or another entity similarly situated to apply to the commissioner of DOC for an exempt person registration in order to sponsor its agents to become licensed and registered under the SAFE Act. It also requires that an exempt person shall comply with all the rules and orders that the commissioner deems necessary to ensure compliance with the SAFE Act, as well as, pay an annual registration fee.

The SAFE Act does not provide states with explicit authority to provide exemptions from requirements of the SAFE Act. Currently, Texas and Louisiana are considering similar exemptions as contained in this bill.

Amendments:

The CFLL provides that CFLL licensees may only broker to other CFLL licensees. Section 1 of this bill would allow exempt person to broker to a depository institution. While this section includes an exemption, staff believes it is necessary to clarify that the exception only applies to the newly created paragraph. Therefore, staff recommends the following amendment on page 4, line 10:

(C) Notwithstanding Sections 22004 and 22059, a licensee may broker loans to a depository institution ***pursuant to this paragraph.***"

REGISTERED SUPPORT / OPPOSITION:

Support

Primerica Life Insurance Company – **co-sponsor**  
State Farm Insurance – **co-sponsor**

California Bankers Association (CBA)

Opposition

None on file.

Analysis Prepared by: Mark Farouk / B. & F. / (916) 319-3081