

Date of Hearing: April 23, 2012

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Mike Eng, Chair
AB 2666 (Banking & Finance) – As Introduced: March 5, 2012

SUBJECT: Mortgage loan originators.

SUMMARY: Provides updates, changes and clarifications to portions of the Residential Mortgage Lending Act (RMLA) and the California Finance Lenders Law (CFLL). Specifically, this bill:

- 1) Provides a definition of "expungement" for purposes of considering expunged or pardoned felony convictions in licensing decisions.
- 2) Exempts employees of federal, state, or local government agencies from the requirements to be licensed as mortgage loan originators (MLO).
- 3) Exempts U.S. Housing and Urban Development (HUD) certified counselors that will only provide traditional counseling services from the requirement to be licensed as a MLO.
- 4) Clarifies exempt company registration procedures.
- 5) Clarifies that an MLO acting under the CFLL is required to be licensed, in order to be consistent with the CFLL.
- 6) Clarifies the validity of electronic records held in the National Mortgage Licensing System (NMLS).
- 7) States that a CFL lender or servicer is prohibited from paying a fee or commission to an unlicensed MLO.

EXISTING LAW

Title V of the Federal Housing Finance Regulator Reform Act, signed by President Bush on July 30, 2008 established the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act requiring the establishment of a national registry for mortgage loan originators and required all the states to establish requirements to carry out the 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 RMLA 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 would amend those portions of the CFLL and the RMLA that implement the SAFE Act. Generally, this bill addresses two issues that have emerged since California's version of the Federal SAFE Act, SB 36 (Chap.160, Stats. 2009 – Calderon), was signed into law. First, the HUD has published its much awaited Final Rule (Federal Register, Vol. 76, No. 126, page 38464 through 38501), effective August 29, 2011, to implement the SAFE Act.

The proposed changes clarify the requirements imposed by the SAFE Act and the HUD Final Rule, and provide mortgage loan providers, such as loan officers and their employer lenders, brokers, and servicers, with clearer guidance as to what is required under the CFLL and the CRMLA. Moreover, clarification of the licensure requirements will assist the DOC when it reviews MLO applications, conducts examinations of lenders, brokers, servicers and MLOs, and brings enforcement actions against those MLOs and their employers who are not in compliance with the law. The changes will also provide guidance to the industry by clarifying the requirements necessary to supervise and train their MLOs.

The proposed legislative language sets forth a definition of "expungement." SB 217 (Chap. 444, Stats. 2011 – Vargas), signed by Governor Brown in October 2011, took effect on January 1, 2012. SB 217 provides that the Commissioner may consider the underlying facts and circumstances of an expunged or pardoned felony conviction in licensing decisions of MLOs. That part of SB 217 was enacted in response to HUD's pronouncement in its Final Rule that "...expunged convictions do not "in themselves" render an individual ineligible..." for licensure as an MLO. However, the term "expungement" is not defined in either the CFLL or the CRMLA. Therefore, it is necessary to define this term and make references to the Penal Code Section 1203.4, on which the definition is based.

The bill would exempt employees of federal, state, and local government agencies when acting under the official authority of and on behalf of the federal, state, or local government agency employer. The HUD Final Rule provides an exemption for federal, state, and local government employees. HUD states that the employee is not engaged in the business of a MLO and does not participate in any commercial gain or profit. Based on the non-commercial aspect of the government agency, HUD exempts such individuals from having to become licensed in any state, provided that the MLO's activities are on behalf of a government agency. AB 2666 would allow state departments such as the California Department of Veterans Affairs to save the costs associated with application, prelicensure education, continuing education, testing, and renewal costs.

The bill exempts employees of bona fide nonprofit organizations from MLO licensing requirements, provided the nonprofit organization complies with various criteria specified by HUD. This exemption is necessary to allow bona fide nonprofit organizations, such as Habitat for Humanity, to continue to provide valuable housing services to their constituents.

The HUD Final Rule provides that employees of a bona fide nonprofit organization under specified conditions may be exempt from licensure if the state "...periodically examine[s] the books and activities of the bona fide nonprofit organization and revoke[s] its status...if it does not continue to meet the criteria..." provided in the Final Rule.

The bill allows HUD-certified Housing Counselors who only provide “traditional housing counseling services” to be exempt from licensure. The language is added to the nonprofit organization exemption, explained in paragraph 3 above. This bill would provide HUD-certified Housing Counselors the ability to continue to assist troubled homeowners during this difficult housing market without the added costs of licensure.

The bill clarifies that a subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency is exempt from state licensing requirements.

The bill clarifies that the exempt company procedure provided by SB 217 (Chap. 444, Stats. 2011 – Vargas) is applicable to all exempt companies, not just licensed insurance producers. SB 217 inadvertently applies the exempt company procedure to only licensed insurance producers such as State Farm Bank, the sponsor of the bill. Since DOC does not have jurisdiction over exempt companies, some companies may need a procedure by which their employees could be sponsored in order for their employees to be licensed as MLOs. Although DOC made exempt company procedures available through the NMLS, with the passage of SB 217, because the exempt company procedure became only applicable to State Farm Bank, the legislative proposal would clarify that such procedures are available to exempt companies as long as certain conditions (as provided by rule or order by the Commissioner), are complied with. This provision will allow exempt companies to insure that their employee MLOs are in compliance with the SAFE Act.

Under the RMLA, the licensing requirement of MLOs is explicitly stated. However, under the CFLL, such language is missing. Therefore, the bill would include language to require that an individual who is engaged in the business of a MLO is required to be licensed. This provision is necessary for enforcement purposes, and to ensure consistency.

Under current Corporate Securities Law (CSL) administered by the DOC, there is a provision which states that any document held by a central depository, such as the Central Registration Depository (CRD) is deemed to be a valid original document upon reproduction to paper. The bill would tailor the language from the CSL into provisions in the CFLL and the CRMLA. This provision will assist the DOC’s enforcement efforts, especially if a defendant questions the validity of records held by the NMLS, an electronic document depository system similar to the CRD, in an evidentiary proceeding. According to the DOC, records have not been questioned with regard to their validity at this time.

Under current CRMLA, a lender or servicer is prohibited from paying a fee or commission to an unlicensed MLO. The bill makes the CFLL consistent with the CRMLA by adding similar language to the CFLL. This provision would provide that unlicensed MLOs would be prohibited from profiting when not in compliance with the law.

The bill also offers other technical, clean-up language, such as including “mortgage loan originator” in the CFLL section which provides that the Commissioner may issue a desist and refrain order if there is any violation of the CFLL. This provision would make the CFLL more consistent with the CRMLA. Furthermore, this provision would aid in the DOC's enforcement efforts.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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