



OREGON MANUFACTURED HOUSING ASSOCIATION

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HB 3482 Testimony Before the Human services and Housing Committee

**By Don Miner, Executive Director
Oregon Manufactured Housing Association**

Chair Tomei, and members of the Committee, thank you for the opportunity to appear before you today. For the record, I'm Don Miner, Executive Director of the Oregon Manufactured Housing Association.

The Oregon Manufactured Housing Association (OMHA) supports all of the provisions [HB 3482](#), and the proposed amendments. We are particularly interested in § 15 (pages 22-23) and the provisions of the bill permitting licensed manufactured home retailers and licensed “park” owners to originate loans on a limited number of homes they sell without the need to have a Mortgage Loan Originator license. HB 3482 retains important consumer protections while insuring that seller financing remains a viable alternative for Oregon families.

It should be noted that this is a very limited exemption.

- The dealer / park owner must be licensed and bonded by the Department of Consumer and Business Services (DCBS);
- The law applies only to previously owned homes;
- The dealer / park owner must own the homes being financed;
- The homes must be located within a manufactured home “park”.
- There is a strict limit on the number of homes that can be sold and financed in any year;
- The total number of loans carried by the dealer / park owner is limited;
- All other state and federal laws must be obeyed.

Seller financing plays an important role in financing the sale of older manufactured home located within rental communities. Often, this is the only financing available for older homes.

Absent this limited exemption, the retailer must either:

- Sell the home for cash;
- Become licensed as a “Mortgage Loan Originator” (MLO); or
- Refer the purchaser to a licensed MLO.

All of these alternatives are problematic:

- Few purchasers are able to pay cash for a home.
- Very few licensed manufactured home dealers are licensed MLOs.
- Referring a consumer to a licensed MLO adds substantially to the cost that must be paid by consumers.

In 2008 Congress passes Secure and Fair Enforcement for Mortgage Licensing ([SAFE Act](#)), requiring licensing and registration of loan originators. The 2009 Legislature adopted [HB 2189](#) implementing the S.A.F.E Act in Oregon. [ORS 86A.203](#) requires that seller offering to finance the home being sold must be licensed as a Mortgage Loan Originator (MLO) if the seller negotiates the terms of the loan. The term “residential mortgage loan” is defined to include loan secured by a security interest in a “mobile home” (see [ORS 86A.200\(8\)](#)). As written, Oregon law requires that a licensed manufacture home dealers have and additional MLO license if they offer seller financing.

We believe that the authors of the S.A.F.E Act intended for there to be a limited “seller financing” exemption from the licensing requirements of the Act. On January 22, 2010 Congressman Barney Frank and Congressman Spencer Bachus (primary authors of the S.A.F.E Act) wrote a letter (see attached) to Shaun Donovan (Secretary of HUD) clarifying Congressional intent and saying:

“Several states allow for a de minimis standard that exempts seller financed and / or personal investment loan origination where there are five or fewer loans annually. We believe that these types of standards are consistent with the S.A.F.E. Act language that requires consideration of the commercial context in which mortgage loan originations activities are undertaken.”(emphasis added)

As mentioned in the Frank / Bachus letter, a number of states have adopted legislation providing a limited exemption from the S.A.F.E Act (see attached list). We believe that Oregon should add its name to the growing list of states.

HB 3482 will continue to protect consumers, even with this exemption:

- Manufacture home dealers must continue to obey all other state and federal laws;
- Manufactured home dealers are licensed, bonded and regulated by DCBS, the same agency that licenses and regulates MLO’s (see [ORS 446.661 et. Seq.](#));
- DCBS can take action against dealers who act wrongfully;
- The Department of Justice will continue to regulate the form and content of the sales agreement used by dealers (see [OAR 137-020-0505](#)); and
- The Construction Contractors Board (CCB) will continue to license, bond and regulate dealers who arrange for the delivery or installation of a manufactured home.

In closing, we believe that this limited exemption will serve the interests of consumers, and consumers will continue to enjoy a wealth of consumer protections laws already on the books.

Thank you for your consideration.

U. S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

July 22, 2010

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

Dear Mr. Secretary:

As the primary authors of the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act or the Act) in the U.S. House of Representatives, we look to continue a dialogue clarifying Congressional intent with respect to the Act. Specifically this letter addresses the implementation date for state S.A.F.E. Act laws, the application of S.A.F.E. Act to the manufactured housing industry and a de minimis standard for state S.A.F.E. Act licensing and registration.

Guidance on Implementation Date

An area of concern is the date of implementation of S.A.F.E. Act requirements. As you know, Section 1507(a) of the statute requires implementation of a Nationwide Mortgage Licensing System and Registry within one year of the date of enactment. Further, Section 1508(a) gives HUD backup authority to establish a system for the licensing and registration of loan originators in States where such a system is not in place and in compliance with the S.A.F.E. Act within one year of the date of enactment for States whose legislature meets annually or within two years for States whose legislatures meet biennially. As a result, many states must have a licensing system in place by July 31, 2010. Given the fact that HUD has yet to publish a final rule addressing implementation of the S.A.F.E. Act, HUD should provide prompt and clear guidance for states where there is some debate or uncertainty as to the need for the registration and licensing of certain individuals.

Unique Status of Manufactured Housing Retailers

We believe that it is important to acknowledge that the manufactured housing industry is uniquely affected by the requirements of the Act. Accordingly, we have concerns that the industry not be adversely affected in ways that are inconsistent with the purposes of the S.A.F. E. Act. Such purposes include enhanced consumer protections and uniform and streamlined licensing and reporting requirements for mortgage loan originators. We urge HUD to provide guidance about the various concerns of the industry, which include whether certain activities performed by manufactured housing retailers are administrative or clerical in nature (and therefore not covered under the Act) or undertaken for compensation or gain (as defined by the Act) and dual and additional lender licenses (including educational and testing requirements) for personal property finance lenders. We also are concerned that the current structure utilized by the Nationwide Mortgage Licensing System (NMLS) allow for personal property lenders or the retail sales entity (the typical employer of manufactured housing retailers) to sponsor such retailers as loan originators.

De Minimis Standard

We think it is permissible for States to consider a de minimis standard for registration and licensing requirements under the Act. Several states allow for a de minimis standard that exempts seller financed and/or personal investment loan origination where there are five or fewer loans annually. We believe that these types of standards are consistent with S.A.F.E. Act language that requires consideration of the commercial context in which mortgage loan origination activities are undertaken. We also note that such an exemption would be in line with the federal banking agencies' draft final rule implementing the S.A.F.E. Act, (74 FR 27385) that pursuant to language in the Act, exempts from federal registration employees of federally regulated entities who originate five or fewer loans per year.

In addition, we believe that states may consider S.A.F.E. Act de minimis standard language for an individual who acts as a loan originator exclusively for a single federally chartered depository institution. However, we strongly recommend that such individuals also be required to register with the NMLS and obtain a unique identifier (we recognize that operating protocols for NMLS may need to be modified to accommodate this type of registration). Further, in implementing this de minimis exception, we urge the adoption of a reporting process for such individuals to ensure the number of loans originated is at or below the de minimis threshold during any 12 month period and that any originator who wishes to exceed such threshold may only do so after obtaining a loan originator license from the state. Finally, we also strongly recommend that any de minimis standard or other exemptions from the provisions of the Act be revisited by states on an annual basis.

Thank you for your consideration of our views.


BARNEY FRANK
Chairman


SPENCER BACHUS
Ranking Member

2011 and 2012 State Laws/Regulations on Licensing for Individuals Engaged in Seller Financing
(Habitualness Standard)

The **Alabama** State Banking Department issued an interim rule setting a de minimis exemption from the Alabama SAFE Act for certain individuals engaged in seller financing transactions. The rule provides that an individual is exempt from mortgage loan originator licensing requirements where the individual is the seller of his or her own real property and originates 5 or fewer residential mortgage loans secured by such properties within any 12 month period. The Department states the position that the “formality and commercial context” implied by the SAFE Act’s licensing requirements is absent where an individual does occasional seller financing and also that when and if HUD issues a final rule or other formal guidance that is contrary to this position, the Department will rescind the interim rule. The memorandum issued by the Alabama State Banking Department, dated April 14, 2011, can be found at: http://www.banking.alabama.gov/documents/InterimRule04_11.PDF.

Colorado, H.B. 1022 (Effective March 1, 2011)

Provides an exemption from the mortgage licensing requirements for any person, estate, or trust that provides mortgage financing for the sale of no more than three residential properties that are owned by such person, estate, or trust in any 12-month period to purchasers of such properties.

Illinois, S.B. 1603 (Effective retroactively to January 1, 2011)

Provides an exemption from the licensing statutes for any person or entity that does not originate mortgage loans in the ordinary course of business, but makes or acquires residential mortgage loans: (1) with his or her own funds; (2) for his or her or its own investment; and (3) without intent to make, acquire, or resell more than 3 residential mortgage loans in any one calendar year. The law also adds specific language to clarify that, notwithstanding the new exemption language, all mortgage loan originators must either meet the definition of a registered MLO or be licensed by Illinois and that the new exemption will be subject to any to any authorized agency determination under the federal SAFE Act.

Kentucky, H.B. 409 (Effective July 12, 2012)

A mortgage loan originator license will not be required for any natural person who makes no more than 4 loans each calendar year.

Mississippi, S.B. 2897 (Effective July 1, 2012)

The licensing law provides an exemption from licensing for: any person, estate or trust who owner finances in one calendar year no more than 10 residential mortgage loans or no more than 20 percent of his total residential units sold, whichever is greater.

Nebraska, L.B. 965 (Effective July 18, 2012)

New exemptions to the provisions of the mortgage licensing law include: Any individual who does not repetitively and habitually engage in the business of a mortgage banker, a mortgage loan originator, or a loan processor or underwriter, either inside or outside of this state, who (1) makes a residential mortgage loan with his or her own funds for his or her own investment, (2) makes a purchase-money mortgage, or (3) finances the sale of a dwelling or residential real estate owned by such individual without the intent to resell the residential mortgage loan.

New Hampshire, H.B. 247 (Effective July 13, 2012)

No license is required for an owner of real property who, in any 12 consecutive month period, makes not more than 3 mortgage loans to purchasers of the property for all or part of the purchase price.

The law also provides an exemption from licensing for a person who is not the owner of the real property in question, and any affiliate of the person, who collectively makes 3 or fewer mortgage loans in a 12 consecutive month period, provide that: (1) the person or affiliate does not act as an originator; (2) all origination activities are conducted by an originator duly licensed in New Hampshire; (3) only the licensed mortgage banker or broker that employs or retains the originator is directly or indirectly compensated by the person or affiliate; and (4) only the licensed mortgage banker or broker that employs or retains the originator may directly or indirectly compensate the originator

South Dakota, H.B. 1229 (Effective July 1, 2012)

The list of exemptions from licensing requirements for a mortgage loan originator has been amended to include: (1) an individual who offers or negotiates terms of 3 or less nonresidential mortgage loans in a 12-month period.

Tennessee, H.B. 758 (Effective May 25, 2011)

House Bill 758 adds several new exemptions to the state's mortgage licensure requirements. However, a person noted in these new exemptions will not be exempt from licensure as a mortgage loan originator if HUD or its duly designated successor has expressly determined that the person is subject to licensure as a mortgage loan originator as the term is defined in the federal SAFE Act. Among others, the exemptions include:

- Any person who, as seller, receives or makes in any consecutive 12-month period five or fewer residential mortgage loans and who does not hold himself out to the public as being in the residential mortgage lending business. The de minimis amount will be triggered even if a person makes loans through another person over whom he has control. Also, for purposes of this section, if a person owns a vacant tract of real property which is subsequently subdivided into separate tracts, the sale of all such subdivided tracts will be exempt from the provisions of the licensing act, regardless of the number of individual tracts sold and the number of ultimate purchasers as long as financing does not include the cost of constructing a dwelling.

STATE		UPDATE AND/OR ACTION TAKEN
ALABAMA	AL	State Banking Department rule of five or fewer within any 12 month period.
ALASKA	AK	
ARIZONA	AZ	Statute Enacted 2012 (Chapter 36, Senate Bill 1014, Section 6-991 Arizona Revised Statutes). Five or fewer loans in a calendar year. No issues with CFPB.
ARKANSAS	AR	
CALIFORNIA	CA	Bill introduced 2013
COLORADO	CO	Statute (HB 1022) Enacted March 1, 2011. Three residential properties within any 12 month period.
CONNECTICUT	CT	
DELAWARE	DE	
FLORIDA	FL	None as of 2013
GEORGIA	GA	None as of 2013
HAWAII	HI	No manufactured housing communities.
IDAHO	ID	
ILLINOIS	IL	Statute Enacted (HB 1603), retroactive to January 1, 2011. Three in any one calendar year.
INDIANA	IN	Statute Enacted (Indiana Code 24-4.4-1-301 (38)). Regularly engaged means five or more in a calendar year.
IOWA	IA	None as of 2013
KANSAS	KS	
KENTUCKY	KY	Executive Order approved four or fewer per year. No issues with CFPB. Year effective July 12, 2012.
LOUISIANA	LA	
MAINE	ME	Bill introduced 2013
MARYLAND	MD	
MASSACHUSETTS	MA	
MICHIGAN	MI	
MINNESOTA	MN	None as of 2013
MISSISSIPPI	MS	Statute Enacted 2010 (Section 81-18-5 Mississippi Statutes). No more that 10 per calendar year or no more than 20% of total residential units sold, which ever is greater. No issues with CFPB
MISSOURI	MO	
MONTANA	MT	
NEBRASKA	NE	Statute Enacted (LB 965), July 18, 2012. Habitual and repetitive exemption for seller financing if no intent to resell the loan.
NEVADA	NV	Will introduce bill next session

STATE		UPDATE AND/OR ACTION TAKEN
NEW HAMPSHIRE	NH	Statute Enacted (HB 247). Not more than three loans in any 12 consecutive month period.
NEW JERSEY	NJ	
NEW MEXICO	NM	
NEW YORK	NY	
NORTH CAROLINA	NC	Statute Enacted (53-244.040 (d)(8) North Carolina Code). No more than five in one calendar year. No issues with CFPB.
NORTH DAKOTA	ND	
OHIO	OH	
OKLAHOMA	OK	
OREGON	OR	None as of 2013
PENNSYLVANIA	PA	
RHODE ISLAND	RI	
SOUTH CAROLINA	SC	Statute Enacted (Title 40, Chapter 58, Section 20, Subsection 16 (f). No more than five in any one calendar year. No issues with CFPB
SOUTH DAKOTA	SD	Statute Enacted (HB 1229), Effective July 1, 2012. Two or less nonresidential mortgage loans in a 12 month period.
TENNESSEE	TN	Statute Enacted 2012 (Title 45, Chapter 13, Section 201). Five or fewer per 12 month period. No issues with CFPB.
TEXAS	TX	Statute Enacted September 1, 2011 (Chapter 655, Section 61, Section 180.004 Financial Institutions and Business Code). Five or fewer per year. No problems with CSPB.
UTAH	UT	
VERMONT	VT	Enacted Statute (HB 572). Effective April 20, 2012, defines habitual and repetitive.
VIRGINIA	VA	None as of 2013
WASHINGTON	WA	
WEST VIRGINIA	WV	None as of 2013
WISCONSIN	WI	Bill introduced 2013
WYOMING	WY	

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