



# MEMORANDUM

March 20, 2015

To: Members of the House Committee on Business and Labor

From: David C. Tatman, Administrator, Division of Finance and Corporate Securities

Subject: House Bill 3185

Chair Holvey, Vice-Chairs Kennemer and Barton, and Members of the Committee:

Please accept our apologies for being unable to appear in person today to discuss House Bill 3185. It is our hope that this memorandum provides perspective as the committee deliberates whether to pass the measure on to the full House of Representatives.

In 2009, the Legislative Assembly enacted House Bill 2189. The text of House Bill 2189 mirrors a model law developed by the 50 states and approved by the U.S. Department of Housing and Urban Development to comply with the terms of the S.A.F.E. Act.<sup>1</sup> Under the federal law, individuals – real people, not legal constructs – must obtain a license in order to take mortgage applications and negotiate the terms of the mortgage loan. Negotiation includes activities specific to the loan process, such as advising consumers on loan terms, preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan. Loan originators receive training, undergo rigorous testing, and continue to hone their knowledge of federal and state lending laws. These requirements help to enhance consumer protection and reduce fraud in mortgage lending in all 50 states.

In 2013, the Assembly provided limited relief to individuals selling their own investment properties by passing House Bill 2856. That bill allows individuals to negotiate the terms of up to three mortgage loans in a calendar year, with a ceiling of 8 loans before the person must obtain a license. This bill sought to balance the needs of individual investors buying and selling their own investment properties with the concern that an ongoing business concern could evade meeting the same consumer protection requirements as other businesses.

As proposed, House Bill 3185 exempts corporations from a license they cannot receive in the first place. Businesses engaged in the business of making mortgage loans generally license as a mortgage banker or mortgage broker, or may claim an exemption from the business license. A mortgage lending business' employees, the front line staff that assist borrowers with obtaining a

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<sup>1</sup> 12 U.S.C. § 5101 *et seq.*

mortgage loan, are the mortgage loan originators. It remains unclear how the department would apply an individual exemption to companies.

However, if the bill was indeed intended to apply exemptions to corporate entities, the department is concerned that a proliferation of affiliated limited liability companies (LLCs) could hold hundreds of mortgage loans being made by individuals without the training, experience and good character specified by this assembly. For example, in a large scale securities case the department pursued in 2010, one person controlled over 300 LLCs as part of the investment scheme. If a business created an equivalent number of LLCs to hold up to eight loans each, it is easy to see that the exemption becomes larger than the rule. Many for-profit businesses in this state engaged in mortgage lending would be at a significant disadvantage to a network of linked corporate entities, and consumers may be borrowing significant sums of money from someone not knowledgeable about fair lending laws.

The department is sensitive to the concerns of nonprofit corporations and individuals personally investing in real property. In 2011, the department adopted by rule exemptions for local governments and nonprofit entities as was allowed by federal regulation. In 2013, the department did not express concerns with the general concept of limited relief for individual investors. However, the department believes that for-profit businesses should also operate on a level playing field, and House Bill 3185 may upend that balance. The department is equally concerned that Oregon becomes an anomaly among the states, which could inhibit licensees from operating across state lines.

Finally, it is our understanding that the proponents plan to introduce amendments adopting the federal standards governing “seller-carry” financing. Unfortunately, the federal rules (called the Final Mortgage Rule by the Consumer Financial Protection Bureau) do not focus on the individual’s interactions with a borrower, but instead focus on when a corporate entity must comply with federal law on lending standards. This includes how an employee loan originator is compensated by the employer and when a company must obtain an appraisal for higher-priced mortgage loans. Unfortunately, the same issues the department raised earlier would also apply to the proposed amendment.

Please feel free to contact Richard Y. Blackwell, Senior Policy Analyst, at (503) 947-7056 or [richard.y.blackwell@oregon.gov](mailto:richard.y.blackwell@oregon.gov) if you have any questions about this memorandum or the bill.