



# Oregon

Kate Brown, Governor

## Department of Consumer and Business Services

Division of Finance and Corporate Securities

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June 2, 2015

Representative Paul Holvey, Chair  
House Committee on Business and Labor  
Oregon State Legislature  
Salem, Oregon

Re: Senate Bill 879-A5

Dear Chair Holvey:

We write to provide information to the committee to aid in the deliberation of the –A5 amendment to SB 879.

For background, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act) in 2008, as the housing crisis swept the country. Congress found that in order to increase uniformity across states, enhance consumer protection and reduce fraud in the mortgage market, all persons taking mortgage applications and negotiating the terms of a loan should be licensed, educated and tested on lending practices.<sup>1</sup>

Through the S.A.F.E. Act, Congress encouraged the states to create a unitary system to license mortgage loan originators across the country. If the states did not or could not act, the federal government possesses authority to assume that responsibility.

In order to facilitate this federal mandate and cooperate, all 50 states adopted a model act developed by the Conference of State Bank Supervisors and approved by the U.S. Department of Housing and Urban Development (HUD). Each state submitted its version of the implementing state law to HUD for review by July 31, 2010; Oregon's version passed, due in part to its reliance on the model act. While the federal S.A.F.E. Act does not exempt attorneys, the states' model act did add in an exemption currently codified in ORS 86A.203(2)(e).

Ever since enactment, the broad nature of the S.A.F.E. Act has prompted both the federal government and the state government to clarify when an individual needed a license. In 2011, HUD issued rules on when a person should obtain a license as a loan originator.<sup>2</sup> The adopted rules guiding states in determining when to license mortgage loan originators, now called Regulation H, draws a line between individuals that "in a commercial context and habitually or repeatedly" make residential mortgage loans from those that do not engage in the business or mortgage lending.<sup>3</sup>

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<sup>1</sup> 12 U.S.C. § 5101.

<sup>2</sup> See 76 Fed. Reg. 78487

<sup>3</sup> 12 C.F.R. § 1008.103(b).



Similarly, in the 2013 legislative session, this body took steps to draw the line between commercial lending and lending of a more incidental nature via House Bill 2856, which allowed individuals to make up to three residential mortgage loans per year and an absolute cap of eight loans.

The S.A.F.E. Act represents a great leap forward in consumer protection in terms of raising the competence and integrity of the people assisting Oregonians in obtaining mortgages. Attempts to water down Oregon's act should be viewed skeptically. But on the other hand, both the federal and the state government recognize there are situations where a person is clearly not in the "business" of mortgage lending, but are nonetheless swept up by the regulatory regime.

To the extent that narrow, reasonable accommodation can be made to these individuals, we may not have concerns. The -A5 amendment to SB 879 attempts to strike that balance for individuals not in the business of residential mortgage lending. In particular:

- The -A5 amendment clarifies that an attorney may receive compensation from a client that by definition is a mortgage loan originator but is otherwise exempt from obtaining a license.
- The -A5 amendment allows individuals that engage in "seller-carry" transactions and take back notes as security – already exempt under Oregon law – to hold notes in a limited liability company.
- The -A5 amendment limits ownership over the notes to the individual originating the notes, or to a closely-held family company. We believe this bill does not allow for outside investors or anyone else to become members of the LLC. The express purpose of adding in family relations was so that an individual could own an LLC with a spouse. It is not our understanding that the bill allows multiple family members to originate notes through one LLC and bypass existing lending caps.
- The LLC set up to make notes cannot advertise or hold itself out as being in the business of making residential mortgage loans. We believe that without this condition, federal law would treat the LLC as being habitually and repeatedly making loans in a commercial context, and require the appropriate state licenses.
- Under current law, the individual may not hold more than eight loans. We believe the -A5 amendment also requires individuals to count notes held across all LLCs the individual may own toward the eight-loan cap. If the -A5 proves unclear, our office reserves the right to engage in rulemaking to ensure that the intent of the bill (i.e., that an individual may not originate more than eight loans without a license) is preserved.
- We also understand that each individual participating in such an LLC is limited to an ownership interest in eight total transactions and that total includes all interest the individual has in the residential mortgages. If the individual's LLC holds eight transactions, then the individual cannot hold any other loans in any capacity. But, for example, if the individual's LLC holds four transactions, then the individual could hold up to four more transactions, either in another LLC, in the individual's personal name or in some combination between the two options.

Rep. Paul Holvey

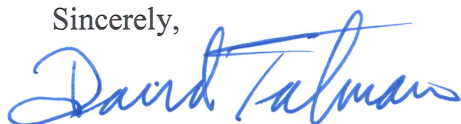
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- The person cannot engage in fraud, make misrepresentations, or otherwise engage in prohibited conduct while exempt. If so, the exemption becomes invalid and our office may pursue appropriate remedies.

Please feel free to contact our office with any questions or concerns.

Sincerely,



David C. Tatman

Administrator, Division of Finance and Corporate Securities

cc: Representative Brent Barton, Vice-Chair  
Representative Bill Kennemer, Vice-Chair  
Senator Floyd Prozanski