

Mortgage Regulation

NEWS

Oregon Division of Finance & Corporate Securities

Fall 2011

Administrator's message



David Tatman

We've just passed the three-year anniversary of the passage of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "S.A.F.E. Act"). In that time, Oregon enacted legislation to comply with the requirements of the S.A.F.E. Act, the Division of Finance and Corporate Securities set up a licensing process as well as issued and renewed thousands of licenses. However, since the passage of the act, there has been uncertainty regarding whether individual employees of local government housing agencies and individual employees of nonprofit housing organizations fall under the definition of "loan originator" for purposes of licensing.

Although these agencies asked that we exempt them from the mortgage loan originator (MLO) licensing requirements in Oregon, the S.A.F.E. Act didn't specify an exemption for MLOs of these organizations.

Under Oregon's implementation of the S.A.F.E. Act (ORS Chapter 86A), the Legislature permitted the Department of Consumer and Business Services director to exempt certain individuals from obtaining a state license if the

U.S. Department of Housing and Urban Development (HUD) requires or permits the exemption by rule.

Collectively, the states turned to HUD to seek clarification on the applicability of the S.A.F.E. Act to nonprofit and government MLOs. In June, HUD released its response. From our initial review of the new HUD rules, it appears that HUD believes that the S.A.F.E. Act does not apply to employees of local governments and certain bona fide nonprofit organizations.

Essentially, HUD determined in the final rule that the S.A.F.E. Act required licensing of individuals that "engaged in the business" of a loan originator. HUD determined that business implies the existence of a commercial context, which is lacking in the following situations:

- Employees of federal, state, and local government agencies, and housing finance agencies
- "Bona fide" nonprofit organizations
- An individual selling his or her own residence

HUD established seven minimum criteria for a state regulator to determine if a nonprofit organization is "bona fide," as considered by the S.A.F.E. Act. These include the tax-exempt status of the organization, the organization's purpose and its incentive structure, how the organization operates, and what kinds of loans the organization offers.

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Administrator's message, continued

Individuals that are in the business of arranging loan modifications would not be exempt from licensing by this rule. Instead, HUD clarifies that the Consumer Financial Protection Bureau should have an opportunity to address whether to include loan modification activities under the S.A.F.E. Act.

Under Oregon law, employees of bona fide nonprofits who provide loan modifications, at little or no cost to the consumer and as part of their broader counseling duties, such as HUD-approved housing counselors, continue to be exempt from licensing. All others, with the exception of a very narrow statutory exemption, must be licensed to engage in loan modification services either as a debt management service provider or as a mortgage lender or mortgage loan originator. Those who engage in loan modification services without the necessary license will be subject to enforcement actions and civil monetary penalties.

Over the next several months, the division plans to develop rules to implement the exemptions as permitted by the HUD final rules. We will follow the traditional rulemaking process, which will involve a full spectrum of stakeholders. We began with a select advisory committee of representatives of both the nonprofit and for-profit companies in mid-August. That committee will provide valuable discussion and insight necessary to craft a proposed rule. Once the proposed rule is refined, we'll publish formal notice of the rulemaking, including a copy of the proposed rule, likely in mid-October. It will be available on the "Proposed Rules" portion of our website at <http://www.oregondfcs.org/rulestat.html> and contain information about the time and

location of the formal public hearing. Written comments may be submitted without attending the hearing. You can find information about where to send those when the notice is published.

On the date provided in the notice, we'll hold a public hearing in which any person who wants to comment on the proposed rule can provide feedback to the hearings officer who presides over the rulemaking hearing. The hearings officer will consider all the comments received and issue a report that either recommends adopting the rule as written or with recommended changes. Then, the final rule is filed with the Secretary of State. Once final, the rule is temporarily published at <http://www.oregondfcs.org/rulestat.html> under the heading "Recent rules - permanent rules not yet posted to Secretary of State Web site." Eventually, the new or changed rule is incorporated with all the rules posted on our website at <http://www.oregondfcs.org/rulestat.html> under the Mortgage Lending Section.

We encourage you to bookmark this section and check it often, or sign up for the e-mail alerts using the link at the beginning of that page. This will help you stay current with changes to any rules that our division may adopt or amend. Specifically, in addition to the rulemaking regarding nonprofit and government MLOs, we expect to engage in rulemaking to conform our fees to those set by the Legislature during the 2011 session and to do some clean up of the administrative rules to remove sections that no longer apply and ensure the rules conform with current practice. If you have any questions or concerns, do not hesitate to contact me, Kirsten Anderson, or the mortgage staff by phone or e-mail. ■

Legislative update

With nearly 3,000 pieces of legislation introduced this session, this update could not cover all the bills of some interest to mortgage lending professionals. The division alone tracked about 160 bills covering topics as diverse as the establishment of a state bank, a reshaping of public records requests, hard drives in copiers, cemetery and funeral product bills, and, of course, mortgage lending. But, for as many bills that were introduced, many concepts related to mortgage lending did not move forward in 2011.

Before session began, the department proposed six bills for the 2011 legislative session to the governor. Over a process of many months, DCBS reached out to stakeholders and drafted concepts. Out of those six that were introduced, three directly affected mortgage lending and manufactured structure dealer licensees, and were ultimately signed into law.

HB 2083 (2011 Oregon Laws Chapter 350): HB 2083 protects residential borrowers' personal financial information from disclosure under the state's Public Records Law. The bill exempts from disclosure mortgage loan documents obtained by DCBS as part of the examination process. Other documents, including the examination report itself, are not exempt and disclosable on request as a public record. The bill still allows mortgage loan documents to be obtained by anyone acting under a subpoena. Additionally, homeowners can obtain their own records from DCBS as long as they produce appropriate identification. The law applies to public records requests made on and after June 16, 2011.

HB 2084 (2011 Oregon Laws Chapter 351): HB 2084 makes changes to the rulemaking advisory committee process. When the Oregon Mortgage

Lender Law was enacted in 1993, the law required DCBS to consult with an equal number of mortgage bankers or mortgage brokers. Since that time, the Legislature's established policy for all state agencies has been to seek public input to the maximum extent possible, including through the appointment of advisory committees. Changes to federal and state law have also added new interested parties who also should be consulted in proposed rulemaking activities. HB 2084 allows DCBS to appoint advisory committees that represents the interests of people that the rules will likely affect. The bill requires DCBS to consider the suggestions of the advisory committee. This allows the department to seek broad public input, including from a variety of constituencies potentially affected by the rule, consistent with the Administrative Procedures Act. This bill applies to advisory committees DCBS convenes for mortgage lending rules as of June 16, 2011.

SB 85 (2011 Oregon Laws Chapter 166): SB 85, as a consensus product with stakeholders, provides consumers more recourse if there are problems with a manufactured structure transaction and grants DCBS more enforcement tools to investigate bad actors and stop bad practices. Before passage of the bill, consumers and businesses had access to half of the \$40,000 bond all manufactured structure dealers must obtain. Under the final bill, if a person is damaged by misrepresentations, fraud, or violations of the manufactured structure dealer statutes (ORS Chapter 446) in a transaction, the person can seek compensation from the full amount of the bond. Additionally, the bill grants DCBS the authority to issue subpoenas for records and cease and desist orders. The protections and enforcement tools in SB 85 are available as of June 1, 2011.

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Enforcement

The Division is in the process of taking action against a number of individuals and companies that engaged in unlicensed or unregistered loan modification activity. Remember that Oregon requires that the company be either licensed a mortgage banker or broker or registered as a debt management service provider. To see these or any other orders taken by the division against an individual or company, please use our search engine at http://www.cbs.state.or.us/external/dfcs/securities/enf/orders/ord_srch.html.

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Legislative update, continued

DCBS also participated in discussions concerning other bills that may be of interest to mortgage lending practitioners. These enacted bills include:

HB 2499 (2011 Oregon Laws Chapter 447): In the 2010 special legislative session, the Legislature passed HB 3624, which required DCBS to register appraisal management companies doing business in Oregon. As DCBS worked to implement the bill with input from a variety of stakeholders, Congress passed the Dodd-Frank Act. One provision of the Dodd-Frank Act required that the same state agency currently regulating individual appraisers also regulate the activities of appraisal management companies. Because Oregon was the only state to split the functions of supervising appraisal management companies and appraisers, the bill's primary purpose was to move responsibility for registering and supervising appraisal management companies from DCBS to the Oregon Appraiser Certification and Licensure Board. The bill also made some substantive changes to the definition and ongoing regulatory requirements of appraisal management companies.

HB 2614 (2011 Oregon Laws Chapter 478): Currently, an Oregon chartered bank must reduce the value of real estate owned by 5 percent of its original book value each year beginning the year the title is vested. The annual write down

must continue until either the bank disposes of the real estate or 15 years, whichever is first. HB 2614 modifies this requirement and allows an Oregon bank to immediately charge off the entire book value of the real estate when the title becomes the bank's property. An amendment to the bill clarified that the real estate owned must always be valued and recorded in the bank's records in accordance with Generally Acceptable Accounting Principals (GAAP). Additionally, the amendment limited the term a bank can hold the real estate to 10 years, effective with real estate taken by the bank on or after the effective date of the bill.

There were several prominent bills involving mortgage lending that did not pass, however — particularly around the issue of foreclosure. While they may not have passed this session, statements by legislators indicate that the concepts may be introduced in subsequent sessions — perhaps as early as February 2012. The bills include:

SB 826: SB 826 would have established a statewide, comprehensive framework for the regulation of loan servicers. Based on the regulatory models of other states, this framework included regulations concerning communications with borrowers, account statements, loss mitigation, and other standards. The bill would have required servicers to register with DCBS, which would have been

directed to adopt rules specifying application requirements and setting fees for application by rule. Also, the bill created a general duty of good faith and fair dealing, and identified specific duties of a servicer toward a borrower.

SB 827: Since 2009, Oregon law has had a process in place to facilitate the communication of requests for home loan modifications. The current law is slated to expire by Jan. 2, 2012. This bill would have removed the sunset provisions on existing law covering loan modifications and would have expanded DCBS' role in implementing the foreclosure warning form first required in SB 628 (2009) to include content. The form would be revised to notify borrowers to record affidavits whether they requested a loan modification. The bill would have required DCBS to create a standard-form loan modification request usable by all lenders or beneficiaries. The bill also would have required a trustee to record an affidavit describing compliance with Oregon law on the loan modification process, with a copy sent to the Department of Justice. Failure to comply with portions of the bill were deemed an unlawful trade practice and actionable by the Department of Justice.

For more information, contact Rick Blackwell at 503-947-7056 or Richard.Y.Blackwell@state.or.us.

Company renewal

The next renewal period will open on Nov. 1, 2011, in the Nationwide Mortgage Licensing System (NMLS). If a company holds an Oregon mortgage broker/banker license that was issued before Nov. 1, 2011, the company will be required to renew the license, as well as any applicable branch licenses, this year.

Step 1: Check that your information in NMLS is correct and that there are no outstanding deficiencies.

In order to renew licenses, the company and any branches must have current information in NMLS and all deficiencies on the licenses must be cleared. While the company is required by OAR 441-860-0070(1) (h) to submit any changes to the license application information in NMLS within 30 days following the change, it's a good idea to check on a yearly basis that the information is correct in NMLS, especially the contact e-mail address, phone number, and address. Performing that yearly check in September is a great way to prepare for the upcoming renewal process. If you find anything you need to update, you will need to file an amendment. You can find a quick guide to explain the process at <http://mortgage.nationwidelicencingsystem.org/licenses/resources/LicenseeResources/Amendments%20Quick%20Guide.pdf>.

<http://mortgage.nationwidelicencingsystem.org/licenses/resources/LicenseeResources/Amendments%20Quick%20Guide.pdf>. File the amendment as soon as possible so our examiners will have plenty of time to review the change and approve it before the renewal period starts.

In addition, be sure to check that there are no outstanding deficiencies on the company and any branch licenses. You can find instructions on how to check the license status and deficiencies at <http://mortgage.nationwidelicencingsystem.org/licenses/resources/LicenseeResources/License%20Status%20Definitions%20for%20Industry.pdf>. If the company or branches have any deficiencies on the licenses, be sure to read them and follow the instructions provided. The company and branch renewals will not be approved until the licenses are clear of deficiencies, so address them now before the examiners are busy processing renewal requests.

Step 2: Check the company's bond amount.

Now is also the time to check whether your company's bond amount needs to change. Your company license will not be renewed

without appropriate bond coverage based upon the dollar volume of Oregon loans originated according to your most recent annual report and using the published scale discussed in this section.

If you did not keep a copy of your company's 2010 annual report, you may log into the annual report system at <https://www4.cbs.state.or.us/exs/Division/mlrpt/index.cfm> to view the filing to obtain the dollar volume of Oregon loans originated. You will need the company's login and PIN to access this system. It is the same one you used to file the report. If you do not have your login and PIN, contact the appropriate licensing examiner based upon your company's name:

Not all companies will have to submit a new bond or bond rider this year. For instance, if the company obtained its first license in Oregon during 2011, the company will not need to increase the bond for the 2011 renewal. For all other companies, the amount of the corporate surety bond must be calculated each year based on the dollar amount of Oregon residential mortgage loans originated in 2010 as listed in the 2010 annual report using the following scale:

Volume of Oregon mortgage loan originations	Bond amount
Less than \$10,000,000	\$50,000
At least \$10,000,000 but less than \$25,000,000	\$75,000
At least \$25,000,000 but less than \$50,000,000	\$100,000
At least \$50,000,000 but less than \$100,000,000	\$150,000
More than \$100,000,000	\$200,000

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Company renewal, continued

So a company that filed a 2010 annual report (this is the report that was due by March 31, 2011) that reported it originated \$85,849,594 in Oregon loans in 2010 would need to have a surety bond in the minimum amount of \$150,000 to renew its license in 2011.

If you need to provide the division with a new bond or a surety bond rider increasing coverage, remember that the division must receive and approve the bond or rider before the renewal request can be approved. We do require the original bond or rider. Mail the original bond or rider to the division at:

DFCS, ML Section
P.O. Box 14480
Salem, OR 97309

Step 3: Submit a renewal request starting on Nov. 1.

The renewal period will open in NMLS on Nov. 1, 2011. All companies holding Oregon licenses issued before that date will be required to renew the company and any branch licenses through NMLS or the licenses will expire on Dec. 31, 2011. Instructions on how to submit a renewal request will be posted on the NMLS and our website when the period opens. Note that the licensing fees have been reduced to \$580.00 for the company and \$185.00 for each branch renewal, which includes the NMLS user fees. Companies must submit their renewal requests by Dec. 1, 2011, to guarantee that we will have time to process the renewal requests before the end of the year. Companies may

submit a renewal requests after Dec. 1, but we will not guarantee that the requests will be processed by the time the company's current licenses expire on Dec. 31, 2011. The renewal window officially closes at midnight on Dec. 31, 2011. Allow up to two weeks for processing of renewal requests.

In order to originate loans after Dec. 31, 2011, companies who are required to renew the license in 2011 must have both a company license in an approved status AND have an approved renewal request. To originate from a branch location, both the company license and renewal must be approved, as well as the branch license must be in an approved status and the branch renewal request must be approved. ■

Fee change

In 2009, the Department of Consumer and Business Services adopted fees for licensing mortgage bankers, mortgage brokers, and mortgage loan originators. Under ORS 291.050 et seq., all fees adopted by state agencies are automatically rescinded after the next regular legislative session,

unless the Legislature adopts them through enabling legislation. During the 2011 regular legislative session, the Legislature adopted reduced licensing fees for mortgage bankers, mortgage brokers, and mortgage loan originators in enabling legislation (2011 House Bill 5014). Effective July 1, 2011, our new fees are:

Please note that the fees listed below do not include any fees charged by the NMLS. Those fees will be in addition to the fees listed below, which is the only amount retained by the division. ■

License	Fee
Initial company license	\$960
Initial branch license	\$330
Initial mortgage loan originator license	\$80
Company renewal	\$480
Branch renewal	\$165
Loan originator renewal	\$65

Loan originator renewal

The new renewal period will open on Nov. 1, 2011, in the Nationwide Mortgage Licensing System (NMLS). If you hold a mortgage loan originator (MLO) license that was issued before Nov. 1, 2011 that is in an active or inactive status, you will be required to renew the license this year.

Step 1: Check that your information in NMLS is correct and that there are no outstanding deficiencies.

In order to renew that license, your information in NMLS needs to be current and all deficiencies on the license must be cleared. While OAR 441-880-0040(6) requires every mortgage loan originator to submit any changes to their information in NMLS within 30 days following the change, it's a good idea to check on a yearly basis that your information is correct in NMLS, especially your e-mail address, phone number, home address, and employer information. Performing that yearly check in September is a great way to prepare for the upcoming renewal process. If you find anything that you need to update, you do that by filing an amendment. You can find a quick guide to explain the process at <http://mortgage.nationwidelicingsystem.org/licensees/resources/LicenseeResources/Amendments-MU4.pdf>. File the amendment as soon as possible so our examiners will have plenty of time to review the change and approve it before the renewal period starts.

In addition, be sure to check that there are no outstanding deficiencies on your license. You can find instructions on how to check your license status and deficiencies at <http://mortgage.nationwidelicingsystem.org/licensees/resources/LicenseeResources/Individual%20License>

[%20Status.pdf](#). If you have any deficiencies on your license, read them and follow the instructions provided. Your renewal will not be approved until your license is clear of deficiencies so address them now before the examiners are busy processing renewal requests.

Step 2: Check that you have completed all required continuing education.

This is also a good time to make sure that you've completed all your required continuing education. ORS 86A.221(1) and OAR 441-880-0022(2) require individual mortgage loan originators to complete 10 hours of NMLS-approved continuing education (CE) unless the MLO completed pre-licensure education in the calendar year. The 10 hours of CE must include three hours in federal law, two hours of ethics (to include fraud, consumer protection, and fair lending issues), two hours of nontraditional mortgage lending, and three hours of electives. The elective hours are not restricted to Oregon laws, rules, and requirements, but must be NMLS-approved courses. Course providers will upload information about the completed courses to the mortgage loan originator's NMLS record within seven business days. You can find instructions on how to view your education record in the NMLS at <http://mortgage.nationwidelicingsystem.org/licensees/resources/LicenseeResources/Course%20Completion%20Records.pdf>. MLOs are always encouraged to complete their CE as early as possible to ensure a smooth renewal. Additional information about CE and a link to approved courses is available on the NMLS website at <http://mortgage.nationwidelicingsystem.org/profreq/education/Pages/default.aspx>.

Be advised that on Oct. 1, 2011, an enhancement is being released in NMLS that will provide state regulators the ability to prevent mortgage loan originators from submitting an application to renew their licenses if they have not completed continuing education classes. Many state licensing agencies using NMLS, including Oregon, will make use of this new option in the NMLS. Since it may take as long as seven days for a course provider to report a course completion into NMLS, MLOs are strongly encouraged not to wait until the last minute to try to complete CE or they may be prevented from submitting for renewal on time.

Step 3: Submit a renewal request starting on Nov. 1.

The renewal period will open in NMLS on Nov. 1, 2011. All MLOs holding Oregon licenses issued before that date will be required to renew the license through NMLS or the license will expire on Dec. 31, 2011. Instructions on how to submit a renewal request will be posted on the NMLS and our website when the period opens. The renewal fee is \$95, which includes the \$30 NMLS fee. MLOs are required to submit their renewal requests by Dec. 1, 2011, to guarantee time to process the renewal requests before the end of the year. MLOs may submit a renewal requests after Dec. 1, but we will not guarantee the requests will be processed by the time the MLO's current license expires on Dec. 31, 2011. The renewal window officially closes at midnight on Dec. 31, 2011. Allow up to two weeks for processing of renewal requests.

In order to originate loans after Dec. 31, 2011, MLOs who are required to renew the license in 2011 must have both a license in an approved status **and** an approved renewal request. ■



Division of Finance & Corporate Securities

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Calendar timelines for licensing and renewals

Date	Action
Oct. 1, 2011	First day companies may submit Third Quarter 2011 MCR
Through Nov. 1, 2011	<ul style="list-style-type: none"> · Companies should verify they have the correct amount of bond and send updated bond, if necessary, to the division · MLOs are advised to complete 2011 CE · Companies and MLOs should work to clear all deficiencies on licenses
Nov. 1, 2011	Renewal request window opens for all licenses in NMLS
Nov. 14, 2011	Deadline for companies to submit Third Quarter 2011 MCR
Dec. 1, 2011	Last day to submit Oregon renewal request for any Oregon license to guarantee review of request before license expires
Dec. 31, 2011	<ul style="list-style-type: none"> · All licenses issued before Nov. 1, 2011, expire at midnight · Renewal request window for all licenses closes in NMLS at midnight · Last day for MLOs to complete 2011 CE
Jan. 1, 2012	<ul style="list-style-type: none"> · Reinstatement request window opens in NMLS for all 2011 licenses that were not renewed · Late CE now available for MLOs who failed to complete 2011 CE · First day companies may submit Fourth Quarter 2011 MCR · Licensed companies may begin submitting 2011 Annual Report