

**SUBJECT:** Establishing federal mortgage requirements for SAFE Act rules

**COMMITTEE:** Pensions, Investments and Financial Services — committee substitute recommended

**VOTE:** 6 ayes — Truitt, Anchia, Anderson, Flynn, Hernandez, Hopson  
0 nays  
3 absent — Parker, Veasey, Woolley

**WITNESSES:** For — D.J. Pendleton, Texas Manufactured Housing Association; Steve Scurlock, Independent Bankers Association of Texas; Larry Temple, Texas Mortgage Bankers Association; (*Registered, but did not testify*: Edra Anderson, Texas Association of Realtors; Harry Dinham, Texas Association of Mortgage Brokers; Robert Doggett, Texas Low Income Housing Information Service; Eric Glenn, HSBC North America; Jeff Huffman, Texas Credit Union League; Celeste May, Texas Bankers Association; Melodie Stegall, Credit Union Legislative Coalition)  
  
Against — None  
  
On — Don Farris, Texas Department of Public Safety; Doug Foster, Texas Department of Savings and Mortgage Lending; Everette Jobe, Texas Department of Banking; Leslie Pettijohn, Office of Consumer Credit Commissioner; (*Registered, but did not testify*: Harold Feeney, Credit Union Department)

**BACKGROUND:** The federal Housing and Economic Recovery Act of 2008 is designed to assist with the recovery and revitalization of the nation's residential housing market. The act includes the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), which seeks to enhance consumer protection and reduce fraud by encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators.  
  
The SAFE Act also establishes a Nationwide Mortgage Licensing System and Registry (NMLSR) for the residential mortgage industry that:

- provides uniform license applications and reporting requirements for state-licensed loan originators;
- provides a comprehensive licensing and supervisory database;
- provides increased accountability and tracking of loan originators;
- streamlines the licensing process and reduces the regulatory burden; and
- facilitates the collection and disbursement of consumer complaints on behalf of state.

The NMLSR will establish protocols for a unique identifier that will permanently identify loan originators and facilitate their electronic tracking and uniform identification. Under the SAFE Act, a residential mortgage originator must obtain and annually maintain a license and registration as a state-licensed loan originator.

Under the SAFE Act, a nontraditional mortgage product is defined as any mortgage product other than a 30-year fixed rate mortgage.

Texas must meet minimum requirements outlined in the SAFE Act by July 31, 2010, to prevent the U.S. Department of Housing and Urban Development from implementing and administering its own mortgage registration and licensing system.

**DIGEST:**

CSHB 10 would amend several sections of the Finance Code, including adding ch. 180 to establish the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009. The bill would require any individual or company who originated residential mortgage loans to be annually licensed by their appropriate state financial regulatory agency and be registered with the Mortgage Licensing System and Registry (NMLSR). The bill would outline minimum requirements for obtaining a residential mortgage loan origination license, enumerate prohibited acts and practices by a residential mortgage loan originator, and outline the authority of state financial regulatory agencies to enforce the requirements. The bill also would require the Office of Consumer Credit Commissioner (OCCC) to establish and administer a recovery fund to reimburse residential mortgage loan applicants who incurred damages from residential mortgage loan originators who committed a prohibited act.

CSHB 10 would define a residential mortgage loan originator as an individual who for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or

offers or negotiates the terms of a residential mortgage loan. A residential loan would be defined as a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent security interest on a dwelling or on residential real estate. A residential mortgage loan originator would not include:

- an individual who performed solely administrative or clerical tasks on behalf of a licensed residential mortgage loan originator;
- a state-licensed or registered real estate broker or salesperson, unless compensated by a lender, mortgage broker, or other residential mortgage loan originator or their agent;
- a state-licensed manufactured home salesperson or broker, unless compensated by a lender, mortgage broker, or other residential mortgage loan originator or their agent;
- an individual who received the same benefits from a financed transaction as he or she would receive from a cash transaction; or
- an individual involved solely in extending credit for timeshare plans.

A registered mortgage loan originator also would be defined as a residential mortgage loan originator who was registered with and maintained a unique identifier through the NMLSR, and was an employee of:

- a depository institution (bank, savings association, credit union, or its subsidiary);
- a subsidiary that was owned and controlled by a depository institute and is regulated by a federal banking agency such as the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, Office of the Comptroller of the Currency, the Office of Thrift Supervision, or a successor agency; or
- an institution regulated by the Farm Credit Administration.

***Authority and rulemaking.*** CSHB 10 would provide broad authority to the Finance Commission through its financial regulatory agencies — the Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner — and the credit union commissioner to administer, interpret, and enforce the bill's provisions through rulemaking. Additionally, the state financial regulatory agencies would be responsible for examining, inspecting, and

investigating licensed residential mortgage loan originators under their jurisdiction, as well as for administering related provisions and enforcing compliance. The credit union commissioner would have authority to examine, investigate, or inspect the employees of a credit union subsidiary organization licensed as mortgage brokers originating residential mortgage loans.

The bill would provide broad authority to the state's financial regulatory agencies to adopt rules establishing requirements, as necessary, for:

- conducting background checks by obtaining criminal history information, civil administrative records, credit history information, and any other information deemed necessary by the NMLSR;
- payment of fees for new or renewal licenses through the NMLSR;
- establishing license renewal dates or reporting periods;
- amending or surrendering a license, or other activity deemed necessary by the state financial regulatory agency for participation in the NMLSR; and
- investigating a violation or complaint and examine any license holder.

***License requirement.*** Under CSHB 10, a residential mortgage loan originator for a dwelling, a residential structure or mobile home that contained one to four family housing units, or individual units of condominiums or cooperatives would be required to be licensed by the appropriate state financial regulatory agency, be enrolled with the NMLSR, and comply with other applicable requirements. This would include individuals participating in a residential mortgage loan origination and licensed or registered:

- as a mortgage broker or loan officer participating in a mortgage loan origination, including employees of a credit union subsidiary organization, under Finance Code, ch. 156;
- as a mortgage banker under Finance Code, ch. 157;
- to issue consumer loans, including secondary mortgage loans, under Finance Code, ch. 342;
- to sell or provide loans for manufactured homes under Finance Code, ch. 347;
- to sell drivable recreational vehicles used as a primary residence under Finance Code, ch. 348; or

- to make, transact, or negotiate property tax loans under Finance Code, ch. 351.

Additionally, a loan processor or underwriter — who would be defined as someone who performs clerical or support duties for a licensed residential mortgage loan originator, who was an independent contractor — would be required to hold a residential mortgage loan originator license and comply with necessary requirements.

A residential mortgage loan originator license holder would have to annually renew the license to maintain it. State financial regulatory agencies would be required to provide a renewal process.

***NMLSR enrollment and requirements.*** A licensed residential mortgage loan originator would be required to enroll with and maintain a valid unique identifier issued by the NMLSR. This would include residential mortgage loan originators employed by non-federally insured credit unions and licensed independent contract loan processors or underwriters. State regulatory officials also could participate in the NMLSR to ensure enrollment and records maintenance, and that transactions and other related fees were processed.

Licensed residential mortgage loan originators would be required to submit a mortgage call report detailing a report of condition to the NMLSR.

State financial regulatory agencies would report regularly to the NMLSR regarding violations, enforcement actions, or other information resulting from licensure, regulation, or examination of a licensed residential mortgage loan originator. Agencies also would establish a process for licensed residential mortgage loan originators to dispute the information submitted.

Under the bill, the unique identifier of an individual, corporation, company, limited liability company, partnership, or association originating a residential mortgage loan would have to be clearly shown on each residential mortgage loan application form, solicitation, or advertisement, including business cards and websites.

***Application for license and background checks.*** Along with submitting an application for a license as a residential mortgage loan originator, an

applicant would be required to provide information on his or her identity, including:

- fingerprints for submission to the Federal Bureau of Investigation (FBI) and any governmental agency or entity authorized to receive the information to conduct a state, national, and international criminal background check; and
- personal history and experience information, including providing authorization for the NMLSR and state regulatory agency to obtain an independent credit report and information relating to an administrative, civil, or criminal findings.

To reduce the points of contact, a state financial regulatory agency could use NMLSR as a channeling agent for handling information flow to and from the U.S. Department of Justice or any other government agency.

***Issuing a license.*** To be issued a residential mortgage loan originator license, an applicant would have to meet certain requirements, such as that the applicant:

- had not had a residential mortgage loan originator license revoked in any governmental jurisdiction, unless the revocation has been fully vacated;
- had not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period before the application date or at any time if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering, unless a full pardon was granted;
- demonstrated financial responsibility, character, and general fitness to provide assurance that the person would operate honestly, fairly, and efficiently as a residential mortgage loan originator;
- provided satisfactory evidence that the applicant has completed prelicensing education courses and passed the required written test; and
- had paid a recovery fund fee or obtained a surety bond.

A person would be deemed not to be financial responsible if he or she had not properly managed his or her own financial affairs. This would include:

- an outstanding judgment against the person, other than a judgment imposed solely as a result of medical expenses;

- an outstanding tax lien or other governmental liens and filings; and
- a foreclosure or pattern of seriously delinquent accounts during the three-year period prior to the date of the license application.

***Required educational courses.*** CSHB 10 would require an applicant for a residential mortgage loan originator license to complete at least 20 hours of NMLSR-approved pre-license education courses, including at least:

- three hours of federal law and regulations;
- three hours of ethics, including instruction on fraud, consumer protection, and fair lending issues; and
- two hours of training related to lending standards for the nontraditional mortgage product marketplace.

Education courses could be offered online, in a classroom, or by another means approved by the NMLSR and could be provided by an applicant's employer, entity affiliated with the applicant by agency contract, or a subsidiary or affiliate of the employer or entity. NMLSR-approved education courses successfully completed in another state could be counted as credit toward completion of the prelicensing education requirements.

To issue a new license to a former residential mortgage loan originator license holder, the state financial regulatory agency would be required to ensure that the applicant had completed all continuing education requirements for the year the license was last held.

***Required test.*** CSHB 10 would require that an applicant for a residential mortgage loan originator pass a written test developed by the NMLSR and administered by an approved test provider. The applicant would have to answer correctly at least 75 percent of the questions to pass. The test would measure the applicant's knowledge and comprehension of:

- ethics;
- federal and state law and regulation pertaining to mortgage origination;
- federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

A person would be able to retake the test three consecutive times, each after waiting 30 days. If a person had not passed the test after three

consecutive tries, he or she would have to wait at least six months before taking the test again. A person also would be required to retake the test if he or she failed to maintain a residential mortgage loan originator license for five consecutive years.

***Standards for license renewal and continuing education.*** In order to renew a residential mortgage loan originator license, the license holder would have to meet the minimum requirements to be issued a license, pay all required license renewal fees, and complete continuing education requirements.

In order to renew a license, the license holder would be required to complete annually at least 8 hours of NMLSR-approved education courses, including:

- three hours of federal law and regulations;
- two hours of ethics training, including fraud, consumer protection, and fair lending issues; and
- two hours of training related to lending standards for the nontraditional mortgage marketplace.

Credit for a continuing education course would only be received in the year the course was taken. Additionally, a license holder could not take the same approved course in the same or successive years. A license holder who was an approved instructor could receive two hours of annual continuing education credit for every one hour taught. Continuing education courses could be provided by the license holder's employer, an affiliate with the license holder by agency contract, or a subsidiary or affiliate of the employer or affiliated entity.

Successfully completed continuing education courses in another state could be applied toward completion of continuing education requirements in Texas.

***Enforcement authority and penalties.*** To ensure effective oversight, a state financial regulatory agency could:

- deny, suspend, revoke, condition, or decline to renew a license for a violation of a related law, rule, order, or directive;



- deny, suspend, revoke, condition, or decline to renew a license if an applicant or license holder failed to meet necessary requirements or withholds information or makes a material misstatement in an application for a new or renewal;
- order restitution against a regulated individual or entity for violating the law;
- impose an administrative penalty on a regulated individual or entity; or
- issue cease and desist orders or directives.

A state financial regulatory agency could impose an administrative penalty on a residential mortgage loan originator or entity originating residential mortgage loans if it, after notice and opportunity for hearing, determined that the person or entity had violated or failed to comply with laws or rules relating to residential mortgage loan originators or a cease and desist order. The penalty would not exceed \$25,000 for each violation and would be based on:

- the seriousness of the violation, including its nature, circumstances, extent, and gravity;
- the economic harm to property;
- history of previous violations;
- amount necessary to deter future violations;
- efforts to correct the violation; and
- any other matter that requires justice.

***Cease and desist orders.*** A state financial regulatory agency could order or direct a regulated person or entity originating residential mortgage loans to cease and desist, including issuing an immediate temporary order, from:

- conducting business;
- violating the law or other harmful activity; and
- engaging in business under a license if the state agency determined that the license was granted in error of the license holder has violated the law.

The state agency also could order or direct other affirmative action as was deemed necessary.

***Confidential nature of information.*** Required information provided to the NMLSR would be regarded as confidential under existing federal and state privacy laws, which would supersede public information protections provided in the Government Code. This would not include information or material regarding the employment history of, or publicly adjudicated disciplinary and enforcement actions against, a residential mortgage loan originator included in the NMLSR for public access.

Information and material would be shared with federal and state mortgage industry oversight officials without losing any privilege or confidentiality protections. Information or material subject to privilege would not be subject to public disclosure or subpoena, discovery, or admission into evidence in a private civil action or administrative proceeding. A person whose information was with the NMLSR could wholly or partially waive the privacy considerations regarding their information or material. A state financial regulatory agency could share information with another government agency, government agency representative, the Conference of State Bank Supervisors, or the American Association of Residential Mortgage Regulators.

***Recovery fund.*** The Office of Consumer Credit Commissioner (OCCC) would establish, administer, and maintain a state-licensed residential mortgage loan originator recovery fund, which would reimburse residential mortgage loan applicants for actual damages incurred due to violations committed by a licensed residential mortgage loan originator of secondary mortgages, sales or loans for manufactured homes, drivable recreational vehicles used as a primary residence, or property tax loans. The fund would not be used to make payments to a lender who made or acquired a residential mortgage loan originated by a licensed residential mortgage loan originator.

Payments from the fund would be reduced by the recovery amount from the residential mortgage loan originator or from any surety, insurer, or other person or entity making restitution to the applicant on their behalf.

The fund could be used to reimburse expenses incurred from securing and destroying abandoned residential mortgage loan documents or the management of the fund, including costs and expenses from applications filed in a court.

Amounts in the fund could be invested and reinvested in the same manner

as Employees Retirement System funds and the interest from the investment would credit the fund. An investment would not be made if it would impair liquidity.

An applicant for a new or renewal license for secondary mortgages, manufactured homes, drivable recreational vehicles used as a primary residence, or property tax loans would be required by OCCC to pay a recovery fund fee in amount to be determined by the OCCC, in addition to a new or renewal application fee.

Any excess balance at the end of each year beyond the \$2.5 million limit for the recovery fund could be used to cover expenses related to participating in and sharing information with the NMLSR.

An application to recover actual damages from the recovery fund could not be filed after two years of the date of the alleged act or omission causing the damages or the date the act or omission should have reasonably been discovered.

***Administration of the recovery fund.*** Under the bill, a residential mortgage loan applicant would file a written sworn application to DSML to recover from the fund. A person knowingly making a false statement to recover money from the fund could be subject to criminal prosecution under Penal Code, sec. 37.10, tampering with a governmental record.

The applicant would demonstrate that his or her claim was based on facts allowing recovery from established violations and that he or she did not have the following relationship with the licensed mortgage broker or loan officer:

- a spouse;
- a child, parent, grandchild, grandparent, or sibling, including relationships by adoption;
- roommate, current or former employer, employee, or associate;
- anyone who had aided, abetted, or participated other than as a victim in any illegal activity; or
- personal representative.

Residential mortgage loan originators could not seek to recover compensation.

After receiving a verified application, OCCC would:

- notify each appropriate license holder and the issuer of any surety issued in connection with the licenses; and
- investigate the application and issue a preliminary determination, giving the applicant, the license holder, and any surety an opportunity to resolve the matter by agreement or to dispute the determination.

If the preliminary determination was not otherwise resolved by agreement and was not disputed by written notice to DSML after 31 days of the notification date, the determination would become final and payment would be issued from the recovery fund within established limits. If the preliminary determination was disputed by any of the parties within the established timeframe, the issue would be set for a hearing under existing administrative procedures in the Government Code and hearing rules of the Finance Commission.

A residential mortgage loan applicant would be entitled to be reimbursed from the fund for actual, out-of-pocket damages under the following restrictions:

- \$25,000, if the claim arose out of a single transaction, regardless of the number of claimants; and
- \$50,000, if against a single person licensed as a residential mortgage loan originator as license by the OCCC.

OCCC would prorate recovery based on the amount of damage suffered by each claimant if there were concurrent claims that exceeded allowed reimbursement amounts by the fund.

The bill contains provisions for OCCC to revoke a residential mortgage loan originator license.

***Prohibitions and false representations.*** CSHB 10 enumerates acts and practices that a licensed residential mortgage loan originator would be prohibited from conducting, including:

- using a scheme or device, directly or indirectly, to defraud or mislead borrowers, lenders, or individuals;
- engaging in unfair or deceptive practices toward a person;

- conducting any business related to residential mortgage loan origination without holding a license;
- obtaining property by fraud or misrepresentation;
- making a false or deceptive statement or representation;
- making a false statement or knowingly making an omission regarding information or a report filed with a state financial regulatory agency, NMLSR, or an investigation conducted by the regulatory agency;
- making a payment, threat, or promise, directly or indirectly, to a person to influence the person's independent judgment regarding a residential mortgage loan;
- making a payment, threat, or promise, directly or indirectly, to a property appraiser to influence the appraiser's independent judgment on the property's value; and
- failing to account truthfully for money belonging to a party in a residential mortgage loan transaction.

A loan processor or underwriter would be prohibited from representing to the public, through advertising, business cards, stationery, brochures, signs, rate lists, or other means, that he or she could act as a residential mortgage loan originator unless licensed.

***Exemptions.*** CSHB 10 would provide exemption to several groups of people, including someone who:

- offered or negotiated terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
- was a licensed attorney who negotiated the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney was compensated by a lender or an agent of a lender, mortgage broker, or other residential mortgage loan originator;
- was an exclusive agent of a registered financial services company;
- was an exclusive agent of a registered financial services company under a written agreement prohibiting the individual from soliciting, processing, negotiating, or placing a mortgage loan with a person other than the registered financial services company or an affiliate of that company;
- was individually enrolled as a registered mortgage loan originator with the NMLSR; and

- offered or negotiated terms of a residential mortgage loan secured by a dwelling that serves as the person's residence.

A residential mortgage loan originator would not have to comply with the requirements outlined in the bill until July 31, 2010, or a subsequent date approved by the Secretary of the U.S. Department of Housing and Urban Development, whichever is later. An individual already authorized to engage in residential mortgage loan origination activities on or before July 31, 2008, would not have to comply with the requirements outlined in the bill until July 31, 2011, or a subsequent date approved by the Secretary of the U.S. Department of Housing and Urban Development, whichever is later.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

CSHB 10 would enact federal requirements of the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), which requires that all residential mortgage loan originators be state-licensed and enrolled in the National Mortgage Licensing System and Registry, a system that issues a unique identifying number permanently identifying a residential loan originator. The minimum requirements in the SAFE Act must be met by July 31, 2010, to keep the U.S. Department of Housing and Urban Development (HUD) from implementing and administering a mortgage licensing system for the state, a system that could result in a more complex and costly regulatory structure, as HUD would not be required to coordinate with state regulators on supervision and enforcement.

The bill would help establish uniformity and standardization across states for mortgage loan originators. This would provide a framework for licensing, promote best practices and responsible behavior, and ultimately ensure better protection of consumers and a more stable marketplace. The bill would improve requirements for testing or pre-licensing education that Texas already requires for some mortgage originators by establishing minimum requirements for all residential mortgage loan originators, assuring a minimum competency level for those originating residential mortgage loans.

The bill represents the culmination of work between state financial regulatory agencies and major stakeholders and is based on model

legislation developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to ensure that each state adopts the necessary minimum requirements.

OPPONENTS  
SAY:

No apparent opposition.

NOTES:

Certain provisions of HB 2774 by Truitt, revising mortgage broker regulation, which was postponed until today, and HB 2779 by Truitt, regulation of mortgage loan originators, which is on today's General State Calendar, would not take effect unless HB 10 were enacted.

The committee substitute revised and added several definitions, including adding the definitions for dwelling and residential mortgage loan originator. It also expanded exemptions provisions, added provisions on the confidentiality of information provided to NMLSR, and adds provisions on prohibited acts and practices. The substitute also added provisions outlining the credit union commissioner's regulatory duty over employees of credit union subsidiary organizations who were licensed as residential mortgage loan originators. Additionally, the committee substitute added provisions for the OCC's residential mortgage loan originator recovery fund.