

Regular Session, 2011

HOUSE BILL NO. 492

BY REPRESENTATIVES HENDERSON AND ARNOLD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FINANCIAL INSTITUTIONS: Provides relative to exemptions to licensure requirements for residential mortgage loan originators

1 AN ACT

2 To amend and reenact R.S. 6:1083(16) and 1087(E)(9) and to enact R.S. 6:1087(E)(10),
3 relative to residential mortgage lenders; to establish an exemption from licensure as
4 a residential mortgage loan originator; to delete provisions defining an employee of
5 a registered mortgage loan originator; to provide for severability; to provide for an
6 effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 6:1083(16) and 1087(E)(9) are hereby amended and reenacted and
9 R.S. 6:1087(E)(10) is hereby enacted to read as follows:

10 §1083. Definitions

11 As used in this Chapter:

12 * * *

13 (16) "Registered mortgage loan originator" means any individual who meets
14 the definition of mortgage loan originator and is an employee of a depository
15 institution or a subsidiary that is either owned and controlled by a depository
16 institution and regulated by a federal banking agency or an institution regulated by
17 the Farm Credit Administration and is registered with, and maintains a unique
18 identifier through, the Nationwide Mortgage Licensing System and Registry. ~~For the~~
19 ~~purposes of this Paragraph, "employee" shall include a natural person who is an~~
20 ~~agent of a depository institution or its controlled and regulated subsidiary acting~~

1 under the management and supervision of the depository institution or its controlled
2 regulated subsidiary and subject to the oversight of a banking agency, but only if:

3 (a) ~~The natural person enters into a written agreement prohibiting the~~
4 ~~individual from soliciting, processing, negotiating, or placing a mortgage loan with~~
5 ~~a person other than the institution or its controlled and regulated subsidiary.~~

6 (b) ~~The natural person would not be barred from licensure pursuant to R.S.~~
7 ~~6:1088(E)(2), (3), or (4), as determined by the commissioner.~~

8 (c) ~~The natural person acknowledges that he is subject to the authority of the~~
9 ~~commissioner under R.S. 6:1091 and 1092, as applicable.~~

10 (d) ~~A financial institution acceptable to the commissioner shall have:~~

11 (i) ~~Provided an undertaking of accountability supported by a surety bond~~
12 ~~equal to one million dollars, to meet the requirement of R.S. 6:1088(G)(1) and to~~
13 ~~cover all of the natural persons who are considered to be employees under this~~
14 ~~Section, which undertaking includes full and direct financial responsibility for the~~
15 ~~loan origination activities of each such natural person.~~

16 (ii) ~~Paid an annual fee of one half the license fee for a mortgage loan~~
17 ~~originator under R.S. 6:1088.2(A)(4) times the number of natural persons who are~~
18 ~~considered exclusive agents under this Section as of December thirty-first of the~~
19 ~~preceding year, as determined by the commissioner.~~

20 (iii) ~~Provided a business plan acceptable to the commissioner that sets forth~~
21 ~~the education program for the natural persons, the handling of consumer complaints~~
22 ~~related to the natural persons, and the supervision of the loan origination activities~~
23 ~~of the natural persons. The provisions of the business plan shall be the following:~~

24 (aa) ~~The commissioner shall have forty-five days in which to accept or deny~~
25 ~~the business plan from its receipt. If the commissioner does not accept or reject the~~
26 ~~plan within forty-five days, the plan will be deemed accepted. If the plan is rejected~~
27 ~~within forty-five days, the commissioner shall make recommendations in writing to~~
28 ~~the financial institution as to changes in the plan that would render it acceptable.~~

1 (9) Any individual who meets all of the following requirements:

2 (a) In any calendar year, originates five or fewer residential mortgage loans
3 exclusively for a single federally chartered depository institution, and the loans are
4 closed.

5 (b) Is contractually prohibited from soliciting, processing, negotiating, or
6 placing a residential mortgage loan with a person other than the single federally
7 chartered depository institution.

8 (c) Enrolls with the Office of Financial Institutions as an individual who
9 originates exclusively with a single federal depository institution until the time any
10 registration with the Nationwide Mortgage Licensing System and Registry
11 (NMLS&R) is required for the individual by federal law or regulation and a suitable
12 category is created for that registration with NMLS&R. Enrollment pursuant to this
13 Subparagraph must be renewed annually with the Office of Financial Institutions.

14 (d) Is not barred from licensure pursuant to R.S. 6:1088(E)(2), (3), or (4), as
15 determined by the commissioner of financial institutions.

16 (e) Is sponsored by a life insurance company or an affiliate of the company
17 which is authorized to engage in business in this state and which is a licensed
18 mortgage loan broker or originator, and which sponsorship shall include all of the
19 following:

20 (i) Providing an undertaking of accountability supported by a surety bond
21 equal to one million dollars, to meet the requirement of R.S. 6:1088(G)(1) and to
22 cover all of the persons who are exempt pursuant to this Paragraph, which
23 undertaking includes full and direct financial responsibility for the loan origination
24 activities of each such exempt person.

25 (ii) Paying an annual fee on behalf of the individual exempted pursuant to
26 this Paragraph in the amount of one-half the license fee for a mortgage loan
27 originator pursuant to R.S. 6:1088.2(A)(4) to the Office of Financial Institutions.

28 (10) The commissioner may exempt mortgage servicer loss mitigation
29 specialists if he determines that an exemption of a mortgage servicer loss mitigation

1 specialist is compliant with the minimum standards set forth in P.L. 110-289, Title
2 V.

3 * * *

4 Section 2. If the secretary of the United States Department of Housing and Urban
5 Development or the director of the Consumer Financial Protection Bureau by final
6 administrative decision determines that R.S. 6:1087(E)(9) or application of R.S.
7 6:1087(E)(9) to any person or circumstance is considered to be in conflict with the federal
8 Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289), or any
9 rules or regulations adopted pursuant to that act, R.S. 6:1087(E)(9) shall be held invalid;
10 however, the remainder of Louisiana law implementing the federal act or the application of
11 the provisions thereof to other persons or circumstances shall not be affected. In the event
12 the provisions of R.S. 6:1087(E)(9) are null and void or otherwise held invalid, and until
13 such time, any person acting according to this provision of invalidity shall be deemed in
14 compliance with the provisions of Louisiana law implementing the federal act and any
15 transactions of any type covered in Louisiana law implementing the federal act are hereby
16 deemed to be lawful and in full force and effect.

17 Section 3. Any licensing requirement for any person operating pursuant to the
18 exception found in R.S. 6:1087(E)(9), should the provisions of R.S. 6:1087(E)(9) be null and
19 void or otherwise held invalid, shall not be effective until one hundred eighty days after the
20 secretary of the United States Department of Housing and Urban Development or the
21 director of the Consumer Financial Protection Bureau makes such a determination of
22 invalidity in writing. This period shall not commence until the commissioner of financial
23 institutions has concurred in this determination and posted official notice of this action on
24 the Office of Financial Institution's official website. The commissioner shall also notify in
25 writing any individual or sponsoring entity enrolled pursuant to this Chapter or any other
26 person requesting notice of such action.

27 Section 4. If any provision of R.S. 6:1087(E)(9) or the application thereof is null and
28 void, or otherwise held invalid, such invalidity shall not affect other provisions or

1 application of R.S. 6:1087 which can be given effect without the invalid provisions or
2 application and to this end the provisions of R.S. 6:1087(E)(9) are hereby declared severable.

3 Section 5. This Act shall become effective upon signature by the governor or, if not
4 signed by the governor, upon expiration of the time for bills to become law without signature
5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
6 vetoed by the governor and subsequently approved by the legislature, this Act shall become
7 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Henderson

HB No. 492

Abstract: Provides an exemption from licensure for certain persons engaged in residential mortgage lending activities as residential mortgage loan originators.

Present law defines "registered mortgage loan originator" as any individual who meets the definition of mortgage loan originator and is an employee of a depository institution or a subsidiary that is either owned and controlled by a depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration and is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry (NMLS&R).

Proposed law retains present law.

Present law provides that for the purposes of present law, "employee" shall include a natural person who is an agent of a depository institution or its controlled and regulated subsidiary acting under the management and supervision of the depository institution or its controlled regulated subsidiary and subject to the oversight of a banking agency, but only if:

- (1) The natural person enters into a written agreement prohibiting the individual from soliciting, processing, negotiating, or placing a mortgage loan with a person other than the institution or its controlled and regulated subsidiary.
- (2) The natural person would not be barred from licensure pursuant to present law, as determined by the commissioner of financial institutions.
- (3) The natural person acknowledges that he is subject to the authority of the commissioner pursuant to present law, as applicable.
- (4) A financial institution acceptable to the commissioner shall have:
 - (a) Provided an undertaking of accountability supported by a surety bond equal to \$1 million to meet the requirement of present law and to cover all of the natural persons who are considered to be employees under present law, which undertaking includes full and direct financial responsibility for the loan origination activities of each such natural person.

- (b) Paid an annual fee of one half the license fee for a mortgage loan originator under present law times the number of natural persons who are considered exclusive agents pursuant to present law as of Dec. 31 of the preceding year, as determined by the commissioner.
- (c) Provided a business plan acceptable to the commissioner that sets forth the education program for the natural persons, the handling of consumer complaints related to the natural persons, and the supervision of the loan origination activities of the natural persons. The provisions of the business plan shall be the following:
 - (i) The commissioner shall have 45 days in which to accept or deny the business plan from its receipt. If the commissioner does not accept or reject the plan within 45 days, the plan will be deemed accepted. If the plan is rejected within 45 days, the commissioner shall make recommendations in writing to the financial institution as to changes in the plan that would render it acceptable.
 - (ii) If the plan is rejected, the financial institution shall have 45 days to make recommended changes to the plan and resubmit it to the commissioner for reconsideration.
 - (iii) The commissioner shall have 15 days from the receipt of the resubmitted plan to accept or deny the resubmitted plan. If the resubmitted plan is not accepted or rejected within 15 days, the plan shall be deemed accepted.
 - (iv) The denial of the plan or dissatisfaction with the substance of the plan shall entitle the applicant to a hearing before the division of administrative law, provided the applicant has filed notice requesting the hearing with the commissioner within 15 days of the receipt of the commissioner's decision. The commissioner shall forward the request and any supporting documents to the division of administrative law within 10 days. Such hearing shall be scheduled to take place within 60 days from the date a request is received by the division of administrative law, unless continued by all parties, and a decision shall be rendered as expeditiously as possible.
 - (v) Any applicant aggrieved by the division of administrative law's decision shall be entitled to judicial review pursuant to present law in the 19th JDC, which shall conduct a de novo review. Such action is entitled to priority and preference over all other pending civil matters such that a decision should be rendered as expeditiously as possible.

Proposed law deletes present law.

Present law provides exemptions from the provisions of present law applicable to certain persons engaged in residential mortgage lending activities as a residential mortgage loan originator.

Proposed law retains present law and adds an exemption for any individual who meets all of the following requirements:

- (1) In any calendar year, originates five or fewer residential mortgage loans exclusively for a single federally chartered depository institution and the loans are closed.

- (2) Is contractually prohibited from soliciting, processing, negotiating, or placing a residential mortgage loan with a person other than the single federally chartered depository institution.
- (3) Enrolls with the Office of Financial Institutions as an individual who originates exclusively with a single federal depository institution until the time any registration with the NMLS&R is required for the individual by federal law or regulation and a suitable category is created for that registration with NMLS&R. Enrollment pursuant to proposed law must be renewed annually with the Office of Financial Institutions.
- (4) Is not barred from licensure pursuant to proposed law, as determined by the commissioner of financial institutions.
- (5) Is sponsored by a life insurance company or an affiliate of the company which is authorized to engage in business in this state and which is a licensed mortgage loan broker or originator, and which sponsorship shall include all of the following:
 - (a) Providing an undertaking of accountability supported by a surety bond equal to \$1 million to meet the requirement of proposed law and to cover all of the persons who are exempt pursuant to proposed law, which undertaking includes full and direct financial responsibility for the loan origination activities of each such exempt person.
 - (b) Paying an annual fee on behalf of the individual exempted pursuant to proposed law in the amount of one half the license fee for a mortgage loan originator pursuant to proposed law to the Office of Financial Institutions.

Present law authorizes the commissioner of financial institutions to exempt mortgage servicer loss mitigation specialists if he determines that an exemption of a mortgage servicer loss mitigation specialist is compliant with the minimum standards of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

Proposed law retains present law.

Proposed law provides that, if the secretary of the U.S. Dept. of Housing and Urban Development or the director of the Consumer Financial Protection Bureau by final administrative decision determines that proposed law or application of proposed law to any person or circumstance is considered to be in conflict with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, or any rules or regulations adopted pursuant to that act, proposed law shall be held invalid; however, the remainder of La. law implementing the federal act or the application of the provisions thereof to other persons or circumstances shall not be affected.

Proposed law provides that, in the event the provisions of proposed law are null and void or otherwise held invalid, and until such time, any person acting according to the provision of invalidity in proposed law shall be deemed in compliance with the provisions of proposed law and any transactions of any type covered in proposed law shall be deemed to be lawful and in full force and effect.

Proposed law provides that any licensing requirement for any person operating pursuant to the exception found in proposed law, should the provisions of proposed law be null and void or otherwise held invalid, shall not be effective until 180 days after secretary of the U.S. Dept. of Housing and Urban Development or the director of the Consumer Financial Protection Bureau makes such determination of invalidity in writing. This period shall not commence until the commissioner of financial institutions has concurred in this determination and posted official notice of this action on the Office of Financial Institution's official website. The commissioner shall also notify in writing any individual or sponsoring

entity enrolled pursuant to proposed law or any other person requesting notice of such action.

Proposed law provides that, if any provision of proposed law or the application thereof is null and void, or otherwise held invalid, such invalidity shall not affect other provisions or application of proposed law which can be given effect without the invalid provisions or application and to this end the provisions of proposed law shall be declared severable.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 6:1083(16) and 1087(E)(9); Adds R.S. 6:1087(E)(10))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. In determining exempt individuals, changes from 12-month period to calendar year the period of time an individual may originate 5 or fewer residential mortgage loans exclusively for a single federally chartered depository institution and the loans are closed.