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ANALYSIS

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Senate Bill 462 (Substitute S-1 as reported)
Senate Bill 463 (Substitute S-1 as reported)
Senate Bill 464 (Substitute S-1 as reported)
Senate Bill 465 (Substitute S-1 as reported)
Sponsor: Senator Randy Richardville (S.B. 462)
 Senator Tony Stamas (S.B. 463)
 Senator Dennis Olshove (S.B. 464)
 Senator Alan Sanborn (S.B. 465)
Committee: Banking and Financial Institutions

Date Completed: 5-19-09

RATIONALE

As part of the Housing and Economic Recovery Act of 2008, Congress enacted the Safe and Fair Enforcement for Mortgage Licensing Act (the SAFE Act) to require states to establish uniform regulations and minimum licensing requirements for mortgage loan originators. The SAFE Act also requires states to ensure that mortgage loan originators register with the Nationwide Mortgage Licensing System and Registry (NMLSR), to increase accountability and provide the ability to track individuals across state lines. The NMLSR, which is administered by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, provides each loan originator with a unique identification number, which under the SAFE Act must be displayed on all documents related to the loan originator's business activities.

In addition, the SAFE Act requires loan originators to meet certain education requirements, pass a written test, submit to a criminal background check and credit check, and meet certain minimum asset requirements or post a surety bond, among other requirements. Most states must implement the Act's requirements by July 31, 2009, although the Department of Housing and Urban Development (HUD) may grant an extension of up to 24 months if it determines that a state is making a good faith effort to comply with the Act.

It has been suggested that the SAFE Act's provisions should be implemented in Michigan. According to the Office of Financial and Insurance Regulation, compliance is necessary to maintain supervisory authority over State-licensed mortgage loan originators.

CONTENT

Senate Bill 462 (S-1) would create the "Mortgage Loan Originator Licensing Act" to do the following:

- **Prohibit an individual from engaging in the business of a mortgage loan originator without obtaining and maintaining a license under the Act, with certain exceptions.**
- **Require a person applying for a license to undergo a criminal background check and submit certain personal history information.**
- **Require an applicant to meet specified prelicensing education requirements, pass a written test, and post a surety bond.**
- **Require a licensed mortgage loan originator to complete annual continuing education requirements, including education in Federal law and regulations, ethics, and lending standards for the nontraditional mortgage product marketplace.**

- **Require the Commissioner of Financial and Insurance Regulation to establish a schedule of fees sufficient to pay the expected costs of administering and enforcing the Act, including an annual fee for each licensed mortgage loan originator.**
- **Require the fees to be deposited into the Mortgage Brokers, Lenders, and Servicers Licensing Act Fund.**
- **Provide that the Commissioner would have to require mortgage loan originators to be licensed and registered through the NMLSR.**
- **Permit the Commissioner to issue an order suspending an individual's license or prohibiting an individual from being licensed under certain circumstances.**
- **Permit the Commissioner to conduct investigations or examinations for the purpose of initial licensing, license removal or suspension, or investigating violations or complaints.**
- **Authorize the Commissioner to direct, subpoena, or order the attendance of any person with relevant testimony about the loans or the business or subject matter of an investigation.**

Senate Bill 463 (S-1) would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA) to require a loan officer to be registered under the proposed Mortgage Loan Originator Licensing Act, rather than under the MBLSLA as currently required.

Senate Bill 464 (S-1) would amend the Secondary Mortgage Loan Act to require a secondary mortgage loan officer to be registered under the proposed Act, rather than under the Secondary Mortgage Loan Act as currently required.

Senate Bill 465 (S-1) would amend the Consumer Financial Services Act to prohibit a licensee acting as a mortgage broker or mortgage lender from employing or engaging an individual as a loan officer to originate mortgage loans unless he or she were a licensed loan officer under the proposed Act.

Senate Bill 462 (S-1) is tie-barred to Senate Bills 463, 464, and 465, each of which is tie-barred to Senate Bill 462.

Senate Bill 462 (S-1) would take effect on July 31, 2009; the remaining bills would take effect on August 1, 2010. The bills are described in detail below.

Senate Bill 462 (S-1)

License

Beginning August 1, 2010, an individual could not engage in the business of a mortgage loan originator with respect to any dwelling located in the State without first obtaining and maintaining annually a license under the proposed Act, unless specifically exempt. Each licensed mortgage loan originator would have to register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

The unique identifier of any person originating a residential mortgage loan in the State would have to be shown clearly on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents, as established by rule or order of the Commissioner.

Each of the following would be exempt from the Act:

- A registered mortgage loan originator, when acting for a depository institution, a subsidiary of a depository institution that was owned and controlled by that institution and regulated by a Federal banking agency, or an institution regulated by the Farm Credit Administration.
- An individual who offered or negotiated terms of a residential mortgage loan with or on behalf of an immediate family member of that individual.
- An individual who offered or negotiated terms of a residential mortgage loan secured by a dwelling that served as his or her residence.
- A licensed attorney who negotiated the terms of a residential mortgage loan on behalf of a client as an ancillary matter to his or her representation of the client, unless the attorney were compensated by a lender, mortgage broker, or other

mortgage loan originator or by any agent of one of those entities.

A loan processor or underwriter who was an independent contractor could not engage in the activities of a loan processor or underwriter unless he or she obtained and maintained a license under the proposed Act.

The Commissioner could establish licensing rules and interim procedures for licensing and acceptance of applications, including expedited review and licensing procedures for previously registered or licensed individuals.

("Mortgage loan originator" would mean an individual who meets all of the following:

- For compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan.
- Is not an individual engaged solely as a loan processor or underwriter (except as provided regarding an independent contractor).
- Is not a person who only performs real estate brokerage activities and is licensed or registered under the laws of this State, unless the person is compensated by a lender, mortgage broker, or other mortgage loan originator, or the agent of one of them.
- Is not a person solely involved in extensions of credit relating to timeshare plans.)

License Application

An applicant for a license would have to apply in a form as prescribed by the Commissioner. The applicant would have to include with the application the required annual operating fee and the required criminal history check.

A person that employed or offered to employ, or engaged or offered to engage as an agent, an individual as a mortgage loan originator, to originate mortgage loans after July 31, 2010, would have to conduct a criminal history check of that individual. The applicant would have to submit the results of that check with his or her license application.

The FBI would have to perform the criminal history check. The individual who was the subject of the check would have to have his or her fingerprints taken by a law enforcement agency or by another qualified person, as determined by the Commissioner. The individual would have to pay the agency or person the fees required by the FBI, and request that the agency or person performing the criminal history check forward the fingerprints and fee to the FBI for a national criminal history check.

A criminal history check could be conducted, requested of the FBI, and submitted to the Commissioner any time on or after July 31, 2009.

An applicant also would have to furnish to the NMLSR information concerning his or her identity, including the results of the criminal history check and the applicant's personal history and experience. This would have to include authorization for the NMLSR and the Commissioner to obtain both of the following concerning the applicant:

- An independent credit report obtained from a consumer reporting agency.
- Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

Licensee Qualifications

The Commissioner could not issue a mortgage loan originator license unless he or she found at least the following:

- The applicant was not subject to a prohibition order issued by the Commissioner under the proposed Act or under any of the financial licensing acts.
- The applicant had never had a mortgage loan originator license revoked in any governmental jurisdiction, except that the Commissioner could not consider a revocation that was formally vacated.
- The applicant had not been convicted of, or pleaded no contest to, a felony or misdemeanor involving fraud, dishonesty, or a breach of trust, money laundering, embezzlement, forgery, a financial transaction, or securities, at any time before the date of the application; or any other felony within the 10-year period preceding that date.
- The applicant had completed the prelicensing education requirements.

- The applicant had passed a written test that met the test requirement specified in the Act.
- The applicant had met the surety bond requirement.
- The applicant had demonstrated financial responsibility, character, and general fitness that commanded the confidence of the community and warranted a determination that the mortgage loan originator would operate honestly, fairly, and efficiently within the purposes of the Act.

A determination that an individual had not shown financial responsibility could include a finding of any of the following:

- Current outstanding judgments, except those that were solely the result of medical expenses.
- Current outstanding tax liens or other government liens and filings.
- Foreclosures within the past three years.
- A pattern of seriously delinquent accounts within the past three years.

("Financial licensing acts" would mean that term as defined in the Consumer Financial Services Act, i.e., that Act, the Regulatory Loan Act, the Secondary Mortgage Loan Act, the Motor Vehicle Sales Finance Act, the Sale of Checks Act, the Money Transmission Services Act, and the MBLSLA.)

Prelicensing Education Requirement

To meet the prelicensing education requirement to qualify for a license, an applicant would have to complete at least 20 hours of education approved as described below, including the following:

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

("Nontraditional mortgage product" would mean any mortgage product other than a 30-year fixed rate mortgage.)

Only prelicensing education courses reviewed and approved by the NMLSR could be used to satisfy that requirement.

Prelicensing education could be offered in a classroom, online, or by any other means approved by the NMLSR.

If a person completed any of the above prelicensing education requirements that were approved by the NMLSR for any state, the Commissioner would have to accept those hours of education as credit toward completion of the prelicensing education requirement of the proposed Act.

For an application for a license submitted before August 1, 2010, completion of certain classroom instruction requirements described in the Mortgage Brokers, Lenders, and Servicers Licensing Act or the Secondary Mortgage Loan Act would satisfy the prelicensing education requirement. To apply such a course to the prelicensing requirement, an applicant would have to provide proof in the form of a certificate of completion or other evidence acceptable to the Commissioner.

Written Test Requirement

To meet the written test requirement for licensure, an individual would have to pass a qualified written test developed by the NMLSR and administered by a test provider approved by the NMLSR based on reasonable standards.

A qualified written test would have to measure adequately the applicant's knowledge and comprehension in appropriate subject areas, including ethics and State and Federal law and regulation pertaining to mortgage origination and mortgage lending, including fraud, consumer protection, and fair lending issues and the nontraditional mortgage marketplace.

An approved provider could provide a test at the location of the applicant's employer, the location of any subsidiary or affiliate of the employer, or the location of any entity with which the applicant held an exclusive arrangement to conduct the business of a mortgage loan originator.

An individual would not be considered to have passed a qualified written test unless he or she achieved a test score of 75% or more correct answers to questions.

An individual could retake a test three consecutive times, if each retaking occurred

at least 30 days after the preceding test. If an individual failed three consecutive tests, he or she would have to wait at least six months before taking the test again.

Surety Bond

Each mortgage loan originator would have to provide to the Commissioner or be covered by a surety bond that met the requirements described below. If the mortgage loan originator were an employee or exclusive agent of a person subject to the proposed Act and that person had provided the Commissioner with a surety bond that satisfied the Act's requirements, the Commissioner could accept that surety bond in lieu of the mortgage loan originator's surety bond obligation.

A surety bond would have to provide coverage for each mortgage loan originator covered by that bond in one of the amounts shown in Table 1, based on the sum of the principal amounts of mortgage loans the mortgage loan originator closed in the preceding calendar year.

Table 1

Sum of the principal amounts of mortgage loans closed in the preceding calendar year	Required Surety Bond
Less than \$12.0 million	\$10,000
\$12.0 million or more but less than \$24.0 million	\$25,000
\$24.0 million or more	\$50,000

The surety bond would have to be in a form prescribed by the Commissioner.

If an action were commenced on a bond, the Commissioner could require the filing of a new bond. If there were a recovery in that action, the mortgage loan originator immediately would have to provide to the Commissioner a new surety bond that met the above requirements.

Annual License Renewal

The Commissioner would have to renew the license of a licensed mortgage loan originator annually if all of the following were met before his or her current license expired:

- The mortgage loan originator continued to meet the minimum standards for license issuance under the proposed Act.
- He or she had satisfied the annual continuing education requirement.
- He or she had paid the required fee.

If a mortgage loan originator failed to satisfy those requirements for renewal, his or her license would expire. The Commissioner could adopt procedures for the reinstatement of expired licenses consistent with the standards established by the NMLSR.

Continuing Education Requirements

To meet the annual continuing education requirements for license renewal, a licensed mortgage loan originator would have to complete at least eight hours of education approved by the NMLSR, including at least the following:

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

Only continuing education courses reviewed and approved by the NMLSR, based on reasonable standards, could be used to satisfy the continuing education requirements.

An approved continuing education course could be provided by the mortgage loan originator's employer, an entity affiliated with the originator by an agency contract, or a subsidiary or affiliate of that employer or entity.

Continuing education could be offered in a classroom, online, or by any other means approved by the NMLSR.

A licensed mortgage loan originator could receive credit for a continuing education course only in the year in which the course was taken (except as provided under procedures developed for the reinstatement of an expired license or procedures by which an individual could make up any deficiency in continuing education).

A licensed mortgage loan originator could not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

A licensed mortgage loan originator who was an approved instructor of an approved continuing education course could receive credit for his or her own annual continuing education requirement at the rate of two years' credit for every one hour taught.

If a person successfully completed any continuing education requirements described above that were approved by the NMLSR for any state, the Commissioner would have to accept those hours of education as credit toward completion of the continuing education requirement under the proposed Act.

Fees

Each year, the Commissioner would have to establish a schedule of fees that were sufficient to pay, but not to exceed, the reasonably anticipated costs of the Office of Financial and Insurance Regulation (OFIR) for administering and enforcing the proposed Act. The fee schedule would have to include an annual fee for each licensed mortgage loan originator in an amount established by the Commissioner.

For amending or reissuing a mortgage loan originator license, the schedule would have to include a fee of not less than \$15 or more than \$200.

A licensed mortgage loan originator would have to pay the actual travel, lodging, and meal expenses incurred by employees of OFIR who traveled out of State to conduct an examination or investigation of a licensed mortgage loan originator and the cost of independent investigators employed by the Commissioner to conduct an investigation.

Fees received under the Act would not be refundable.

A mortgage loan originator license renewal fee that was not received by December 31 would be subject to a penalty of \$25 for each day the fee was delinquent, up to a maximum of \$1,000.

Money received from fees would have to be deposited in the MBLSLA Fund.

NMLSR Participation

The Commissioner would have to require mortgage loan originators to be licensed and registered through the NMLSR. To carry out that requirement, the Commissioner would be authorized to participate in the NMLSR and could by rule establish other requirements that he or she considered necessary, including any of the following:

- The payment of fees to apply for or renew licenses through the NMLSR.
- The setting or resetting as necessary of renewal or reporting dates.
- Amending or surrendering a license or any other activities that the Commissioner considered necessary for participation in the NMLSR.

The Commissioner also could establish requirements for the following background checks:

- The criminal history of a licensed mortgage loan originator or license applicant through fingerprint or other databases.
- Information about a licensed mortgage loan originator or license applicant in civil or administrative records.
- A licensed mortgage loan originator's or license applicant's credit history.
- Any other information about a licensed mortgage loan originator or license applicant considered necessary by the NMLSR.

The Commissioner would have to establish a process through which mortgage loan originators could challenge information entered into the NMLSR by the Commissioner.

Penalties; Fines; & Directives

To ensure the effective supervision and enforcement of the proposed Act, the Commissioner could do any of the following, in a manner consistent with the Administrative Procedures Act (APA):

- Deny, suspend, revoke, condition, or decline to renew a license for a violation of the proposed Act, rules issued under

the Act, or an order or directive entered under the Act.

- Deny, suspend, revoke, condition, or decline to renew a license if a licensed mortgage loan originator or license applicant failed at any time to meet the requirements for licensure or license renewal or withheld information or made a material misstatement in an application for a license or license renewal.
- Order restitution against a person for a violation of the Act.
- Impose a civil fine on a person subject to the Act, as described below.

The Commissioner could impose a civil fine on a mortgage loan originator or other person subject to the Act if the Commissioner found, on the record after notice and opportunity for hearing, that the mortgage loan originator or other person had violated or failed to comply with a requirement of the Act, a rule promulgated under it, or an order issued under it.

The maximum fine for each violation or failure to comply would be \$25,000. Each violation or failure to comply would be a separate and distinct violation or failure.

The Commissioner could issue any of the following orders or directives:

- Order or direct a person who was subject to the Act to cease and desist from conducting business, including an immediate temporary order to cease and desist.
- Order or direct a person who was subject to the Act to cease any harmful activities or violations of the Act, including an immediate temporary order to cease and desist.
- Enter an immediate temporary order to cease business under a license or interim license issued under the Act, if the Commissioner determined that the license or interim license was granted erroneously or the licensee was currently in violation of the Act.
- Issue an order of suspension or prohibition from being licensed under the Act under certain circumstances (described below).
- Order or direct any other affirmative action that the Commissioner considered necessary.

Suspension or Prohibition for Fraud

If, in the opinion of the Commissioner, an individual had engaged in fraud, the Commissioner could serve on that person a written notice of intention to prohibit him or her from being licensed under the proposed Act, licensed or registered under any of the financial licensing acts, or employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts.

The notice would have to contain a statement of the facts supporting the prohibition and, except as otherwise provided, would have to set a hearing on a date within 60 days after the date of the notice. If the individual did not appear at the hearing, he or she would be considered to have consented to the issuance of an order in accordance with the notice.

If, after a hearing, the Commissioner found that any of the grounds specified in the notice had been established, he or she could issue an order of suspension or prohibition, as described above. An order would be effective when served on an individual. The Commissioner also would have to serve a copy of the order upon the licensee of which the individual was an employee or agent. The order would remain in effect until it was stayed, modified, terminated, or set aside by the Commissioner or a reviewing court.

After five years from the date of an order, the individual subject to it could apply to the Commissioner to terminate the order.

If the Commissioner considered that an individual served a notice of intention posed an imminent threat of financial loss to customers, the Commissioner could serve an order suspending the individual from being employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts. In that case, unless otherwise agreed to by the Commissioner and the individual served with the order, the Commissioner would have to hold a hearing to review the suspension between five and 20 days after the date of the notice.

If an individual were convicted of a felony involving fraud, dishonesty, or breach of trust, the Commissioner could issue an order suspending or prohibiting him or her from

being licensed under the Act, licensed or registered under any of the financial licensing acts, or employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts.

The Commissioner would have to mail a copy of any notice or order issued under these provisions to the employer or principal of the individual subject to the notice or order.

Within 30 days after the Commissioner had notified the parties that the case had been submitted to him or her for final decision, the Commissioner would have to render a decision that included findings of fact supporting the decision and serve on each party a copy of the decision and an order consistent with it.

Except for a consent order, a party to the proceeding or a person affected by an order issued under these provisions could obtain a judicial review of the order. A consent order could be reviewed as provided under the APA.

Except for an order under judicial review, the Commissioner could terminate or set aside any order. The Commissioner could terminate or set aside an order under judicial review with the permission of the court.

Unless ordered by the court, the commencement of proceedings for judicial review would not stay the Commissioner's order.

The Commissioner could apply to the Ingham County Circuit Court for the enforcement of any outstanding order.

An individual who violated a final order issued under these provisions would be guilty of a misdemeanor punishable by a maximum fine of \$5,000 or imprisonment for up to one year, or both.

As used in these provisions, "fraud" would include actionable fraud; actual or constructive fraud; criminal fraud; extrinsic or intrinsic fraud; fraud in the execution, inducement, or in law; or any other form of fraud.

The Commissioner regularly would have to report violations of the Act, enforcement actions, and other relevant information to the NMLSR, subject to the confidentiality provisions described below.

Confidentiality

The requirements of the Freedom of Information Act (FOIA) or any Federal law concerning the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under Federal or State law or rules of any Federal or State court concerning that information or material, would continue to apply after the information or material was disclosed to the NMLSR, except as otherwise provided in the SAFE Act.

Any such information or material could be shared with any state and Federal regulatory official with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal law or FOIA.

For the purpose of these provisions, the Commissioner could enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies, as established by rule or order of the Commissioner.

Any information that was subject to a privilege or confidentiality under these provisions would not be subject to disclosure under any Federal or state law governing the disclosure to the public of information held by an officer or an agency of the Federal government or the respective state, and would not be subject to subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless the person to whom the information or material pertained waived that privilege.

These provisions would not apply to any information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a mortgage loan originator that was included in the NMLSR for access by the public.

Investigations

For purposes of initial licensing, license removal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with the proposed Act, the Commissioner could gain access to, receive, and use any books, accounts, records, files, documents, information, or evidence, including the following:

- Criminal, civil, and administrative history information.
- Personal history and experience information, including independent credit reports obtained from a consumer reporting agency.
- Any other documents, information, or evidence the Commissioner considered relevant to the inquiry or investigation, regardless of their location, possession, control, or custody.

The Commissioner could direct, subpoena, or order the attendance of and examine under oath any person whose testimony could be required about the loans or the business or subject matter of that examination or investigation and could direct, subpoena, or order that person to produce books, accounts, records, files, and any other documents that the Commissioner considered relevant to the inquiry.

Each licensed mortgage loan originator or other person subject to the Act would have to make available to the Commissioner on request the books and records relating to his or her or another person's operations. The Commissioner could interview relevant parties considering the business of the licensed mortgage loan originator or other person.

In making any examination or investigation authorized by the proposed Act, the Commissioner could control access to any documents and records of the licensed mortgage loan originator or other person under examination or investigation, either by taking possession of the documents and records or by placing a person in exclusive charge of the documents and records in the place where they usually were kept.

If the Commissioner were controlling access to documents or records under that

provision, a person could not remove or attempt to remove any of them except under a court order or with the consent of the Commissioner. The licensed mortgage loan originator or the owner of the documents and records would have to have access to them as necessary to conduct ordinary business affairs, unless the Commissioner had reasonable grounds to believe that the documents or records had been or were at risk of being altered or destroyed to conceal a violation of the Act.

A licensed mortgage loan originator or other person subject to investigation or examination under the above provisions could not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information from the Commissioner.

A licensed mortgage loan originator who failed to submit to the Commissioner a report requested as part of an investigation would be subject to a penalty of \$25 for each day the report was delinquent, up to a maximum of \$1,000.

Prohibited Activities

A licensed mortgage loan originator could not do any of the following:

- Engage in fraud, deceit, or material misrepresentation in connection with any transaction governed by the proposed Act.
- Intentionally, or due to gross or wanton negligence, repeatedly fail to provide borrowers with any material disclosures of information required by law.
- Directly or indirectly make a false, misleading, or deceptive advertisement regarding mortgage loans or their availability.
- Suppress or withhold from the Commissioner any information that the originator possessed and that, if submitted, would have made him or her ineligible for licensure or license renewal under the Act at the time of application and would have allowed the Commissioner to refuse to license him or her.
- Be convicted of, or plead no contest to, any felony or a misdemeanor involving fraud, dishonesty, or a breach of trust, money laundering, embezzlement,

forgery, a financial transaction, or securities.

- Refuse or fail to furnish any information or make any report required by the Commissioner to issue or renew a license under the Act, or otherwise required by the Commissioner, within a reasonable period of time, as determined by the Commissioner, after he or she requested it.

Condition Reports

A licensed mortgage loan originator, or employer or principal of a licensed mortgage loan originator on his or her behalf, would have to submit to the NMLSR reports of condition, in the form and containing the information required by the NMLSR.

Action by Attorney General

If any fees or penalties were not paid when required, the Attorney General could maintain an action against the delinquent licensed mortgage loan originator for the recovery of the fees and penalties together with interest and costs.

Senate Bill 463 (S-1)

Loan Officer

Under the MBLSLA, the Commissioner must exercise general supervision and control over mortgage brokers, mortgage lenders, and mortgage servicers doing business in the State, and loan officers originating mortgage loans in the State. The bill would remove the reference to loan officers, and would remove references to loan officer registrants and registration throughout the Act.

("Loan officer registrant" means an individual who is registered under Section 2a of the Act. The bill would remove that definition, replacing it with a definition of "licensed loan officer", i.e., a loan officer who was registered as a mortgage loan originator under the proposed Mortgage Loan Originator Licensing Act.)

The MBLSLA prohibits a person from acting as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under the Act, except under certain circumstances. That requirement does not apply if the person is

providing loan officer services as an employee or agent of only one mortgage broker, lender, or servicer and is registered as a loan officer registrant if required under the Act.

Under the bill that exception would refer instead to a licensed loan officer, if licensure were required under the Mortgage Loan Originator Licensing Act.

The MBLSLA prohibits a loan officer from receiving any compensation for originating a mortgage loan unless he or she is a loan officer registrant. The bill would refer instead to a licensed loan officer.

Fees

The MBLSLA provides for an annual fee for each loan officer registrant in an amount established by the Commissioner, and a fee of not less than \$15 or more than \$200 for amending or reissuing a loan officer registration. The bill would remove those provisions.

The bill would require fees established under the proposed Mortgage Loan Originator Licensing Act to be deposited into the MBLSLA Fund. Currently, money in the Fund may be used only to administer and enforce the MBLSLA and the Secondary Mortgage Loan Act and to pay other costs associated with the Commissioner's regulatory obligations. Under the bill, money in the Fund also would have to be used to administer the Mortgage Loan Originator Licensing Act.

Penalties

A person who acts as a loan officer in the State without a required loan officer registration under the MBLSLA is guilty of a misdemeanor punishable by a maximum fine of \$15,000 or imprisonment for up to one year, or both. Under the bill, the same penalty would apply if a person acted as a loan officer in the State and were not a licensed loan officer, if licensure were required under the Mortgage Loan Originator Licensing Act.

Currently, if a loan officer registrant is convicted of, or pleads no contest to, a felony, the Commissioner must revoke his or her loan officer registration. The bill would remove that provision.

Advisory Board Duties

The MBLSLA requires the Mortgage Industry Advisory Board to communicate to the Commissioner issues of concern to the residential mortgage industry and review and make recommendations to the Commissioner concerning the following:

- Course sponsors or providers, course instructors, and the content of and materials for courses provided to loan officers and loan officer applicants under the Secondary Mortgage Loan Act.
- Content and procedures for examinations given to loan officers under the Secondary Mortgage Loan Act.
- Procedures to verify attendance at and participation in courses conducted electronically under that Act.

The bill would delete those provisions.

In addition, the Board must review and make recommendations concerning rules proposed under the MBLSLA or the Secondary Mortgage Loan Act. The bill also would require the Board to review and make recommendations concerning rules proposed under the Mortgage Loan Originator Licensing Act.

The Board must review and make recommendations regarding procedures for maintaining the confidentiality of personal identifying information and other information concerning all of the following:

- Licensees, registrants, and loan officer registrants.
- Applicants for licensure, registration, or loan officer registration.
- Licensees, registrants, and secondary loan officer registrants under the Secondary Mortgage Loan Act.
- Applicants for licensure, registration, or secondary mortgage loan officer registration under the Secondary Mortgage Loan Act.

The bill would delete those references to loan officer registrants and loan officer registration, and instead would refer to licensees or applicants for licensure under the proposed Mortgage Loan Originator Licensing Act.

Employee Definition

The bill would define "employee" as an individual who meets both of the following:

- Has an employment relationship acknowledged by that individual and the licensee or registrant that engages that individual to originate mortgage loans.
- Is treated as an employee by the licensee or registrant that engages the individual to originate mortgage loans for compliance with Federal income tax laws.

Repeals

The bill would repeal Sections 2a, 2b, 2c, and 22b of the MBLSLA, effective August 1, 2010. Those sections provide for the licensing and registration of loan officers under the MBLSLA and establish certain reporting requirements and prohibited behavior for loan officer registrants.

Senate Bill 464 (S-1)

Secondary Mortgage Loan Officer

The Secondary Mortgage Loan Act requires the Commissioner to exercise general supervision and control over brokers, lenders, and servicers doing business in the State, and secondary mortgage loan officers originating secondary mortgage loans in the State. The bill would delete the reference to secondary mortgage loan officers, and would delete references to secondary mortgage loan officer registrants and registration throughout the Act.

"Secondary mortgage loan officer registrant" means either of the following:

- An individual who is registered under certain sections of the Act.
- An individual who is not required to register to perform services of a secondary mortgage loan officer.

The bill would delete that definition, and would define "licensed loan officer" as a secondary mortgage loan officer who was licensed as a mortgage loan originator under the proposed Mortgage Loan Originator Licensing Act.

Under the Secondary Mortgage Loan Act, a person generally may not act as broker, lender, or servicer without first obtaining a

license or registering under the Act. The Act makes certain exceptions to that requirement, including for a person who is providing secondary mortgage loan officer services as an employee or agent of only one broker, lender, or servicer and is registered as a secondary mortgage loan officer registrant if that registration is required under the Act.

Under the bill, that exception would refer instead to a licensed secondary mortgage loan officer, if licensure were required under the Mortgage Loan Originator Licensing Act.

Fees

The Secondary Mortgage Loan Act provides for an annual fee for each loan officer registrant in an amount established by the Commissioner, and a fee of not less than \$15 or more than \$200 for amending or reissuing a loan officer registration. The bill would delete those provisions.

Penalties

A person who acts as a secondary mortgage loan officer in the State without a required registration under the Act is guilty of a misdemeanor punishable by a maximum fine of \$15,000 or imprisonment for up to one year, or both. Under the bill, the same penalty would apply if a person acted as a secondary mortgage loan officer in the State and were not a licensed secondary mortgage loan officer the proposed Mortgage Loan Originator Licensing Act.

Employee Definition

The bill would define "employee" as an individual who meets both of the following:

- Has an employment relationship acknowledged by that individual and the licensee or registrant that engages that individual to originate secondary mortgage loans.
- Is treated as an employee by the licensee or registrant that engages the individual to originate secondary mortgage loans for compliance with Federal income tax laws.

Repeals

The bill would repeal Sections 2a, 2b, 2c, and 26a of the Act, effective August 1, 2010. Those sections provide for the

licensing and registration of secondary mortgage loan officers under the Act and establish certain reporting requirements and prohibited behavior for secondary mortgage loan officers.

Senate Bill 465 (S-1)

Under the bill, a licensee acting as a mortgage broker or mortgage lender could not employ or engage an individual as a loan officer to originate mortgage loans unless he or she were a licensed loan officer, as defined in the MBLSLA.

A licensee acting as a broker or lender also could not employ or engage an individual as a secondary loan officer to originate secondary mortgage loans unless he or she were a licensed secondary mortgage loan officer.

MCL 445.1651a et al. (S.B. 463)
493.51 et al. (S.B. 464)
487.2059 (S.B. 465)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The recent mortgage crisis has revealed unscrupulous practices by some mortgage loan officers, as well as a lack of accountability in the industry. Because each state had its own regulatory framework, it was difficult to track mortgage lenders who had violated the law or had a suspended license in one state and then transferred operations to another. The SAFE Act was enacted to correct those problems by requiring states to adopt stringent uniform licensing provisions and establishing a nationwide method of monitoring the activities of mortgage originators. The bills would implement the SAFE Act requirements, ensuring that Michigan was in compliance with Federal law.

The bills also would provide additional protections for consumers, ensuring that mortgage loan originators had a certain minimum level of education. Requiring all licensees to register through the NMLSR would prevent individuals who had been convicted of a crime or had a license revoked in one state from continuing to act

as a mortgage originator in another state. That additional level of regulation and accountability could help exclude bad actors from the industry, and could help to ensure that mortgage loan originators' interests were aligned with those of the consumers that they serve. The Commissioner of Financial and Insurance Regulation would have the authority to investigate the activities of a licensee and take corrective action if he or she found that the licensee had violated the licensing requirements.

While 2008 amendments revised the MBLSLA and the Secondary Mortgage Loan Act to establish licensing requirements and provide for additional oversight of mortgage loan originators, the bills would bring those requirements in line with the new Federal mandates. According to a spokesperson for OFIR, the bills are based on model legislation that was reviewed by HUD, which verified that the language met the requirements under the SAFE Act.

Response: While it is important to protect the interests of consumers, the bills should take a balanced approach to help preserve businesses in the State, avoiding excessive regulation or punitive measures. Some individuals working in the mortgage loan industry are experiencing heavy workloads as they work with homeowners to modify an unprecedented number of mortgage loans. Under the circumstances, it could be difficult for those individuals to meet the licensing requirements in the specified time frame. The bills should give loan originators additional time to meet the licensing requirements, to avoid distracting from their efforts.

Supporting Argument

The bills would preserve Michigan's licensing system for mortgage loan originators. According to OFIR, a state's licensing system must meet several minimum requirements for the state to maintain supervisory authority over state-licensed loan originators. If a state fails to comply with the SAFE Act, HUD will develop and maintain a licensing system for mortgage loan originators for that state, according to OFIR.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bills would adjust Michigan's current system of regulation of participants in the

mortgage loan industry to bring it into compliance with Federal requirements in the Secure and Fair Enforcement For Mortgage Licensing Act of 2008, which was included in the Federal Housing and Economic Recovery Act of 2008. The Commissioner of Financial and Insurance Regulation within the Department of Energy, Labor, and Economic Growth would have the authority to establish license fees for mortgage loan originators at amounts sufficient to cover the cost of administering and enforcing the regulation; however, the fee amounts would be constrained to the range permitted in Senate Bill 462 (S-1). Revenue from the fees would be deposited in the existing Mortgage Brokers, Lenders, and Services Licensing Act Fund and used to pay the costs of regulating the profession. Michigan currently is regulating this industry; thus, the proposed changes are not expected to result in major changes to OFIR's administrative costs or revenue.

Under Senate Bill 462 (S-1), any civil fines collected for violations would be deposited into the General Fund. The amount of civil fines would depend on the frequency of violations and the level of the fine assessed.

The bill would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of violating a final order of suspension or prohibition from being licensed. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander
Elizabeth Pratt
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.