

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.

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) and
3 (11) and (F)(11), relative to residential mortgage lenders; to establish an exemption
4 from licensure as a residential mortgage loan originator; to delete provisions defining
5 an employee of a registered mortgage loan originator; to provide for severability; to
6 provide for an 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) and (11) and (F)(11) are 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~~
21 ~~under the management and supervision of the depository institution or its controlled~~
22 ~~regulated subsidiary and subject to the oversight of a banking agency, but only if:~~

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

4 ~~(b) The natural person would not be barred from licensure pursuant to R.S.~~
5 ~~6:1088(E)(2), (3), or (4), as determined by the commissioner.~~

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

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

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

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

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

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

27 ~~(bb) If the plan is rejected, the financial institution shall have forty-five days~~
28 ~~to make recommended changes to the plan and resubmit it to the commissioner for~~
29 ~~reconsideration.~~

~~(cc) The commissioner shall have fifteen 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 fifteen days, the plan shall be deemed accepted.~~

~~(dd) 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 fifteen 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 ten days. Such hearing shall be scheduled to take place within sixty 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.~~

~~(ee) Any applicant aggrieved by the division of administrative law's decision shall be entitled to judicial review pursuant to R.S. 49:950 et seq. in the Nineteenth Judicial District Court, 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.~~

* * *

§1087. Exemptions; annual registration statement; fees

* * *

E. The following shall be exempt from the provisions of this Part applicable to persons engaged in residential mortgage lending activities as a residential mortgage loan originator:

* * *

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

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

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

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

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

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

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

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

24 **(10) Individuals employed by nonprofit corporations exempt under R.S.**
25 **6:1087(F)(11).**

26 **(11) ~~The commissioner may exempt mortgage~~ Mortgage servicer loss**
27 **mitigation ~~specialists if he~~ specialists, if the commissioner determines that an**
28 **exemption of a mortgage servicer loss mitigation specialist is compliant with the**
29 **minimum standards set forth in P.L. 110-289, Title V.**

1 F. The following employers and their employees shall be exempt from the
2 provisions of this Part applicable to residential mortgage lenders and residential
3 mortgage brokers:

4 * * *

5 (11) Any nonprofit corporation that is providing financial education and
6 counseling to consumers, is exempt from federal taxation under Section 501(c) of the
7 Internal Revenue Code, is approved by the United States Department of Housing and
8 Urban Development (HUD) to provide housing counseling, and does not originate
9 residential mortgage loans.

10 * * *

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

24 Section 3. Any licensing requirement for any person operating pursuant to the
25 exception found in R.S. 6:1087(E)(9), should the provisions of R.S. 6:1087(E)(9) be null and
26 void or otherwise held invalid, shall not be effective until one hundred eighty days after the
27 secretary of the United States Department of Housing and Urban Development or the
28 director of the Consumer Financial Protection Bureau makes such a determination of
29 invalidity in writing. This period shall not commence until the commissioner of financial
30 institutions has concurred in this determination and posted official notice of this action on

1 the Office of Financial Institution's official website. The commissioner shall also notify in
2 writing any individual or sponsoring entity enrolled pursuant to this Chapter or any other
3 person requesting notice of such action.

4 Section 4. If any provision of R.S. 6:1087(E)(9) or the application thereof is null and
5 void, or otherwise held invalid, such invalidity shall not affect other provisions or
6 application of R.S. 6:1087 which can be given effect without the invalid provisions or
7 application and to this end the provisions of R.S. 6:1087(E)(9) are hereby declared severable.

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

21 Section 6. Any licensing requirement for any person operating pursuant to the
22 exception found in R.S. 6:1087(E)(10) or (F)(11), should the provisions of R.S.
23 6:1087(E)(10) or (F)(11) be null and void or otherwise held invalid, shall not be effective
24 until one hundred eighty days after the secretary of the United States Department of Housing
25 and Urban Development or the director of the Consumer Financial Protection Bureau makes
26 such a determination of invalidity in writing. This period shall not commence until the
27 commissioner of financial institutions has concurred in this determination and posted official
28 notice of this action on the Office of Financial Institution's official website.

29 Section 7. If any provision of R.S. 6:1087(E)(10) or (F)(11) or the application
30 thereof is null and void, or otherwise held invalid, such invalidity shall not affect other

1 provisions or application of R.S. 6:1087 which can be given effect without the invalid
2 provisions or application and to this end the provisions of R.S. 6:1087(E)(10) or (F)(11) are
3 hereby declared severable.

4 Section 8. This Act shall become effective upon signature by the governor or, if not
5 signed by the governor, upon expiration of the time for bills to become law without signature
6 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
7 vetoed by the governor and subsequently approved by the legislature, this Act shall become
8 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____