

**ADOPTED REGULATION OF THE
COMMISSIONER OF MORTGAGE LENDING**

LCB File No. R038-10

Effective July 22, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1, 4, 5, 11, 12, 14, 16, 17 and 26, NRS 645E.300; §§2, 3, 6-10, 13, 15, 20-23, 25 and 27, NRS 645E.300, 645F.292 and 645F.293; §§18 and 19, NRS 645E.200, 645E.300, 645F.292 and 645F.293; §24, NRS 645E.280, 645E.300 and 645E.310.

A REGULATION relating to mortgages; providing various requirements relating to procedures, terms and deadlines related to the issuance, maintenance, renewal and reinstatement of a license as a mortgage banker; providing certain requirements related to exemptions and certificates of exemption; providing various requirements related to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008; establishing a method for a person with a license to change an electronic mail address; providing for various interaction with the Nationwide Mortgage Licensing System and Registry, including, without limitation, the sharing of information with the Registry; providing certain requirements related to independent contractors, including, without limitation, loan processors and underwriters; requiring a surety bond for certain persons; revising the definition of and various requirements related to a qualified employee; providing certain requirements related to the unique identifier of a residential mortgage loan originator; revising various requirements related to advertising; revising the procedure for closing an office; revising the timing of the payment of certain fees; and providing other matters properly relating thereto.

Section 1. Chapter 645E of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this regulation.

Sec. 2. *“Nationwide Mortgage Licensing System and Registry” or “Registry” has the meaning ascribed to it in NRS 645B.0128.*

Sec. 3. *“S.A.F.E. Mortgage Licensing Act” means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Public Law 110-289, 122 Stat. 2654, Title V, July 30, 2008.*

Sec. 4. *For the purposes of paragraph (b) of subsection 4 of NRS 645E.300, an adverse change in financial condition:*

1. Is not proven solely by a decrease in income from any previous period if the mortgage banker remains profitable; and

2. May be shown by material receivables or payables to related parties, material off-balance sheet commitments, contingent liabilities or other identified concerns related to the deterioration of net worth or liquidity.

Sec. 5. *For the purposes of paragraph (a) of subsection 2 of NRS 645E.670, “insolvent” is interpreted to mean that the liabilities of a mortgage banker exceed his or her assets, as calculated by the Commissioner in accordance with generally accepted accounting principles, and the calculation:*

1. Must exclude any intangible and any amount receivable by the mortgage banker that is related to the intangible; and

2. May exclude any shareholder debt that is subordinated.

Sec. 6. *In addition to the requirements of subsection 1 of NRS 645E.160, a person who claims an exemption from the provisions of chapter 645E of NRS pursuant to subsection 1 of NRS 645E.150 must ensure that the entity or agency which regulates the conduct of his or her business provides to the Commissioner written notification that:*

1. The license of the person provides the right to make mortgage loans;

2. The entity or agency will investigate complaints arising from or relating to consumers in this State; and

3. If the person conducts activity as a residential mortgage loan originator, the person is in compliance with the requirements of the S.A.F.E. Mortgage Licensing Act and any regulation adopted pursuant thereto.

4. As used in this section, “residential mortgage loan originator” has the meaning ascribed to it in NRS 645B.01325.

Sec. 7. As regards the renewal of a license pursuant to subsection 1 of NRS 645E.280, the Commissioner will not renew the license of a mortgage banker if the mortgage banker:

- 1. Has not paid all fees, fines and assessments owed to the Division or the Registry;*
- 2. Is not properly registered with the Registry;*
- 3. Fails to provide any required annual financial statements or reports of condition to the Division or Registry; or*
- 4. Fails to provide any other item required by federal or state law or regulation, including, without limitation, the S.A.F.E. Mortgage Licensing Act.*

Sec. 8. If a licensee who provided an electronic mail address to the Division wishes to change that address, the licensee shall make the change and notify the Division through the Registry.

Sec. 9. When an applicant or licensee is required to submit information or pay fees to the Division, the Commissioner may:

- 1. Require the applicant or licensee to submit the information or pay the fees directly to the Division or to the Division through the Registry; and*
- 2. Require the applicant or licensee to submit extra copies of the information, including, without limitation, a set of the applicant’s or licensee’s fingerprints and written consent to an investigation of his or her credit history.*

Sec. 10. 1. Each applicant for a license issued pursuant to chapter 645E of NRS:

(a) Shall comply with any applicable federal or state law or regulation, including, without limitation:

(1) The provisions of the S.A.F.E. Mortgage Licensing Act and any regulation adopted pursuant thereto; and

(2) Any applicable requirement pursuant to chapter 645B, 645E or 645F of NRS or any regulation adopted pursuant thereto, including, without limitation, any applicable requirement relating to:

(I) A bond; or

(II) A license for a loan processor or underwriter who is an independent contractor;

and

(b) Must be licensed with the Division through the Registry.

2. As used in this section:

(a) "Clerical or support duties" has the meaning ascribed to it in section 1503(4)(B) of the S.A.F.E. Mortgage Licensing Act.

(b) "Loan processor or underwriter" means a natural person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 645B or 645E of NRS.

Sec. 11. 1. Pursuant to subsection 3 of NRS 645E.200, the Commissioner will not issue a license as a mortgage banker unless the requirements of that subsection have been fulfilled.

2. For the purposes of subparagraph (2) of paragraph (b) of subsection 3 of NRS 645E.200, the Commissioner will not consider a person to have been convicted or entered a plea of guilty or nolo contendere if the conviction or plea has been pardoned or vacated.

3. *For the purposes of subparagraph (4) of paragraph (b) of subsection 3 of NRS 645E.200, a license shall not be considered to be revoked or suspended if the revocation or suspension was subsequently vacated.*

Sec. 12. *The Commissioner may only reinstate a mortgage banker's license pursuant to subsection 2 of NRS 645E.280 if, within 2 months after the date on which the license expired, the mortgage banker:*

- (a) Submits the items described in subsection 2 of NRS 645E.280; and*
- (b) Completes any unfulfilled requirements related to the license.*

Sec. 13. *Unless otherwise specifically prohibited by federal law and pursuant to the S.A.F.E. Mortgage Licensing Act, any person exempt from licensing pursuant to the provisions of chapter 645E of NRS may file a written application for a certificate of exemption with the Office of the Commissioner for the purposes of fulfilling the requirements of the S.A.F.E. Mortgage Licensing Act, including, without limitation, for the purposes of:*

- 1. Registering with the Registry, but such registration does not affect the exempt status of the person;*
- 2. Sponsoring a mortgage agent;*
- 3. Fulfilling any bonding requirements related to an associated mortgage agent; or*
- 4. Fulfilling reports of condition requirements.*

Sec. 14. *1. A mortgage banker shall deposit with the Commissioner and keep in full force and effect a corporate surety bond payable to the State of Nevada which is in the amount set forth in this section and is executed by a corporate surety satisfactory to the Commissioner.*

2. If a mortgage agent is an employee of, or is associated with, a mortgage banker subject to the provisions of chapter 645E of NRS, the surety bond of the mortgage banker may be used

to fulfill the mortgage agent's individual surety bond requirement pursuant to chapter 645B of NRS, if one exists, so long as the surety bond of the mortgage banker:

(a) Expressly covers the mortgage agent as a principal; and

(b) Names the mortgage banker as a principal and names all mortgage agents employed by or associated with the mortgage banker as principals, either by individual name or as a group, such as "All Employed or Associated Mortgage Agents."

3. A bond deposited pursuant to this section must be in substantially the following form:

Know All Persons by These Presents, that, as principal, and, as surety, are held and firmly bound unto the State of Nevada for the use and benefit of any person who suffers damages because of a violation of any provision of chapter 645B, 645E or 645F of NRS or any regulation adopted pursuant thereto, in the sum of, lawful money of the United States, to be paid to the State of Nevada for such use and benefit, for which payment well and truly to be made, and that we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of that obligation is such that:

Whereas, the principal has been issued a license as a mortgage agent, mortgage broker or mortgage banker by the Commissioner of Mortgage Lending and is required to furnish a bond, which is conditioned as set forth in this bond:

Now, therefore, if the principal, and the principal's agents and employees, strictly, honestly and faithfully comply with the provisions of chapters 645B, 645E and 645F of NRS and any regulation adopted pursuant thereto, and pay all damages suffered by any person because of a violation of any provision of chapter 645B, 645E or 645F of NRS or any regulation adopted pursuant thereto or by reason of any fraud, dishonesty, misrepresentation or concealment of material facts growing out of any transaction governed by the provisions of chapter 645B, 645E or 645F of NRS or any regulation adopted pursuant thereto, then this obligation is void; otherwise it remains in full force.

This bond becomes effective on the (day) of (month) of (year), and remains in force until the surety is released from liability by the Commissioner of Mortgage Lending or until this bond is cancelled by the surety. The surety may cancel this bond and be relieved of further liability hereunder by giving 60 days' written notice to the principal and to the Commissioner of Mortgage Lending.

In Witness Whereof, the seal and signature of the principal hereto is affixed, and the corporate seal and the name of the surety hereto is affixed and attested by its authorized officers at, Nevada, this (day) of (month) of (year).

..... (Seal)

Principal

..... (Seal)

Surety

By

Attorney-in-fact

.....

Licensed registered agent

4. The required amount of the surety bond that complies with the provisions of this section is calculated by the Commissioner by determining the annual loan production amount for the person or persons covered under the bond and:

(a) In the case of an initial surety bond, the expected annual loan production is determined by an estimate of the Commissioner; and

(b) After the deposit of an initial surety bond, the expected annual loan production is based upon the annual loan production in the previous year.

5. The surety bond amounts will be set and adjusted as necessary annually by the Division in accordance with the following scale:

<i>Annual Loan Production</i>	<i>Bond Amount Required</i>
<i>\$20,000,000 or less.....</i>	<i>\$50,000</i>
<i>Greater than \$20,000,000.....</i>	<i>\$75,000</i>

6. The procedure regarding cancellation of a bond is as follows:

(a) A surety may cancel a bond upon giving 60 days' notice to the Commissioner by certified mail;

(b) Upon receipt by the Commissioner of notice, the Commissioner will immediately notify the mortgage banker who deposited the bond:

(1) Of the effective date of the cancellation; and

(2) That the license of the mortgage banker will be revoked unless the mortgage banker furnishes an equivalent bond before the effective date of the cancellation;

(c) The notification by the Commissioner must be sent to the mortgage banker by certified mail to the last address of record filed in the office of the Division; and

(d) If the mortgage banker does not comply with any requirements set out in the notification from the Commissioner, the license of the mortgage banker must be revoked on the date the bond is cancelled.

7. Any person:

(a) May claim against a bond by bringing an action in a court of competent jurisdiction on the bond for damages to the extent covered by the bond, but an action may not be commenced after the expiration of 3 years following the commission of the act on which the action is based; and

(b) Who claims against a bond shall notify the Commissioner in writing by certified mail upon filing the action.

8. Upon receiving a request from a person for whose benefit a bond is required, the Commissioner will notify the person:

(a) That a bond is in effect and the amount of the bond; and

(b) If there is an action against the bond, of the title of, the court and case number of, and the amount sought in that action.

9. If a surety wishes to make payment without awaiting action by a court:

(a) The amount of the bond must be reduced to the extent of any payment made by the surety in good faith under the bond; and

(b) Any payment must be based on written claims received by the surety before any action is taken by a court.

10. A surety may bring an action for interpleader against all claimants upon the bond, and if the surety brings an action, the surety:

(a) Shall publish notice of the action at least once each week for 2 weeks in every issue of a newspaper of general circulation in the county of the principal place of business of the mortgage banker; and

(b) May deduct its costs of the action, including attorney's fees and publication, from its liability under the bond.

11. Claims against a bond:

(a) Have equal priority;

(b) If the bond is insufficient to pay all claims in full, must be paid on a pro rata basis, but partial payment of claims is not full payment; and

(c) Do not preclude a claimant from bringing an action against a mortgage banker for an unpaid balance.

Sec. 15. 1. The Division shall regularly report violations of this chapter and chapter 645E of NRS, enforcement actions and other relevant information, including, without

limitation, violations of any applicable federal law or regulation, to the Registry pursuant to the protocols of the Registry.

2. A person may challenge information provided by the Division to the Registry.

3. A challenge must be sent in writing by regular mail to the Division and addressed to the Office of the Commissioner.

4. Once received, the Division shall consider the merits of a challenge and provide the person with a written reply which must be sent by regular mail to the person within 30 days after receipt of the challenge.

5. The person may send a written rebuttal within 30 days after receipt of the Division's reply by regular mail to the Division and addressed to the Office of the Commissioner.

6. Upon receipt of the written rebuttal, the Commissioner will make a written final decision concerning the written rebuttal and underlying challenge and send the final decision by regular mail to the person within 30 days.

7. If, pursuant to subsection 6, the Commissioner upholds a challenge, the Commissioner will promptly take action to correct the information submitted to the Registry.

8. The Commissioner will not submit a challenge, reply, rebuttal or final decision described in this section to the Registry unless otherwise required by law.

Sec. 16. NAC 645E.010 is hereby amended to read as follows:

645E.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 645E.020 to 645E.100, inclusive, and NAC 645E.015 and 645E.030 *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 17. NAC 645E.030 is hereby amended to read as follows:

645E.030 “Qualified employee” means a natural person who is ~~[a director, officer, member, partner, employee, manager or trustee of a partnership, corporation or limited liability company designated by the partnership, corporation or limited liability company pursuant to NAC 645E.310 to act on behalf of the partnership, corporation or limited liability company.]~~
designated by a mortgage banker to act on behalf of the mortgage banker and who is approved by the Commissioner pursuant to NAC 645E.310.

Sec. 18. NAC 645E.210 is hereby amended to read as follows:

645E.210 1. An applicant must submit with his application for a license pursuant to chapter 645E of NRS:

(a) A copy of his business license, when applicable, or his application for such a license if he has not obtained one.

(b) A copy of the certificate filed by the mortgage banker pursuant to chapter 602 of NRS indicating the fictitious name of the mortgage banker, if any.

(c) If the applicant is a corporation, a copy of:

(1) Its articles of incorporation and its bylaws;

(2) Its balance sheet and a statement of the profit and loss of the corporation for the 2 years immediately preceding the year of the application; and

(3) The most recent list of its officers and registered agents that is filed with the Secretary of State.

(d) If the applicant is a partnership or joint venture, a copy of the agreement of partnership or joint venture and the financial statements of the partners for the 2 years immediately preceding the year of the application.

(e) If the applicant is a corporation being organized, a copy of its proposed articles of incorporation and its bylaws.

(f) If the applicant is a limited-liability company, a copy of:

(1) Its articles of organization and operating agreement;

(2) A statement of the profit and loss of the limited-liability company for the 2 years immediately preceding the year of the application; and

(3) The most recent list of its members or managers, and registered agents, that is filed with the Secretary of State.

(g) ~~[A copy of the lease of the applicant or other document that includes the address of the place of business of the applicant.~~

~~—(h) Documentation from the appropriate municipal or county authority which indicates that local ordinances allow permanent business signs to be maintained at the place of business of the applicant.]~~ *Evidence that the applicant has met the requirements imposed by the S.A.F.E.*

Mortgage Licensing Act.

(h) A current electronic mail address.

2. If an applicant has received a letter of conditional approval of his application from the Division which imposes additional requirements that the applicant must satisfy to obtain a license, the applicant must comply with those requirements within 30 days after the date on which the letter was issued by the Division. If the applicant does not satisfy all additional requirements set forth in the letter within the period prescribed in this subsection, the conditional approval of the application will be deemed to have expired and the applicant must reapply to obtain a license. The Commissioner may, for good cause, extend the 30-day period prescribed in this subsection.

Sec. 19. NAC 645E.220 is hereby amended to read as follows:

645E.220 1. An applicant must submit with his application for a license for a branch office ~~the~~:

(a) *The* name, residence address and telephone number of a qualified employee designated to manage the branch office ~~;~~; *and*

(b) *The name of each mortgage agent who intends to work at the branch office.*

2. The Commissioner will approve an application for a license for a branch office if:

(a) The principal office of the mortgage company has been examined by the Commissioner and has received at least a satisfactory rating during the preceding 12 months.

(b) The Commissioner approves the qualified employee designated to manage the branch office. The Commissioner will not approve a qualified employee to manage a branch office if the qualified employee manages or has been designated and approved to manage another office.

~~[(c) The applicant provides documentation from the appropriate municipal or county authority which indicates that local ordinances allow permanent business signs to be maintained at the branch office.]~~

3. The Commissioner may waive the requirements of subsection 2 upon good cause shown.

4. A license for a branch office may be issued only in the name in which the mortgage banker is licensed to conduct business at its principal office.

5. Each branch office must conspicuously display its license at the branch office.

6. A mortgage banker is responsible for and shall supervise:

(a) Each branch office of the mortgage banker; and

(b) Each qualified employee *and mortgage agent* authorized to conduct mortgage lending activity at a branch office of the mortgage banker.

7. The Commissioner may require that an applicant meet the requirements of the S.A.F.E. Mortgage Licensing Act.

Sec. 20. NAC 645E.270 is hereby amended to read as follows:

645E.270 A person does not hold himself out as being able to perform the services described in NRS 645E.100 if ~~the only~~ ***the person:***

1. Is in compliance with the S.A.F.E. Mortgage Licensing Act and any regulation adopted pursuant thereto; and

2. Only offers to provide money to invest in loans secured by an interest in real property to:

~~1.1~~ ***(a)*** A mortgage banker licensed pursuant to chapter 645E of NRS; or

~~1.2~~ ***(b)*** A person exempt from the provisions of chapter 645E of NRS.

Sec. 21. NAC 645E.285 is hereby amended to read as follows:

645E.285 1. A mortgage banker shall not represent an activity which is not licensed pursuant to chapter 645E of NRS as being licensed pursuant to that chapter.

2. Except as otherwise provided in subsection 3, an advertisement for an activity which is licensed pursuant to chapter 645E of NRS must be separate and distinct from an advertisement for an activity which is not licensed pursuant to that chapter.

3. A mortgage banker may advertise jointly with a company licensed pursuant to chapter 624 or 645 of NRS if each business is disclosed separately in the advertisement and each business incurs a pro rata share of the cost associated with the advertisement.

4. A mortgage banker must include in his advertisements, including any advertising material available on the Internet:

(a) The complete name of the mortgage banker or the complete name under which the mortgage banker does business.

(b) The ~~license number,~~ address , ~~and~~ telephone number *and either the license number or unique identifier* that the mortgage banker has on file with the Division. Additional telephone or cellular phone numbers of the mortgage banker may also be included.

(c) A description of any licensed activity mentioned in the advertisement, written in nontechnical terms.

5. A mortgage banker shall not use advertising material that simulates the appearance of a check or a communication from a governmental entity, or an envelope containing a check or a communication from a governmental entity, unless:

(a) The words “THIS IS NOT A CHECK,” “NOT NEGOTIABLE” or “THIS IS NOT A GOVERNMENTAL ENTITY,” as appropriate, appear prominently on the envelope and any material that simulates the appearance of a check or a communication from a governmental entity; and

(b) If the material simulates the appearance of a check, the material does not contain an American Bankers Association number, microencoding or any other marks intended to create the appearance that the material is a negotiable check.

6. A mortgage banker shall not refer to an existing lender or financial institution, other than the mortgage banker himself or any affiliate or subsidiary of the mortgage banker, on any advertising material without the written consent of the lender or financial institution.

7. In addition to the requirements of this chapter, each advertisement used in carrying on the business of a mortgage banker must comply with:

(a) NRS 598.0903 to 598.0999, inclusive, concerning deceptive trade practices; and

(b) All applicable federal statutes and regulations concerning deceptive advertising and advertising of interest rates.

8. *An Internet link on a website of the mortgage banker that links the user to the website of another commercial enterprise must provide notification to the user that the user is leaving the website of the mortgage banker.*

9. For *the* purposes of this section, “advertisement” ~~{does not}~~:

(a) *Does not* include white-page listings, employment recruiting announcements, office signs, banners, magnetic car signs ~~{, business cards}~~ and letterhead which contain only the name, address and telephone number of the mortgage banker, whether together or separate, and which are used for the purpose of identification only.

(b) *Includes commercial messages that promote the availability of mortgage products or investments offered by the mortgage banker. Commercial messages include, without limitation:*

- (1) *Print media;*
- (2) *Sales literature;*
- (3) *Sales brochures or flyers;*
- (4) *Billboards;*
- (5) *Yellow-page listings if more than a line listing;*
- (6) *Radio and television advertisements;*
- (7) *Mass mailings distributed by the United States Postal Service or another such delivery service or by electronic mail;*
- (8) *Telephone or seminar scripts;*
- (9) *Websites or other Internet sites that promote or accept loan applications; and*
- (10) *Business cards.*

10. As used in this section, “unique identifier” means a number or other identifier assigned by protocols established by the Registry.

Sec. 22. NAC 645E.310 is hereby amended to read as follows:

645E.310 1. Every ~~[partnership, corporation or limited liability company]~~ *person, other than a natural person*, doing business as a mortgage banker in this State shall designate *a natural person as* a qualified employee who may, upon approval by the Commissioner, act on behalf of the ~~[partnership, corporation or limited liability company.]~~ *mortgage banker.*

2. The Commissioner will approve the qualified employee designated pursuant to subsection 1 if the qualified employee ~~[meets the requirements of an applicant for a license as a mortgage banker pursuant to chapter 645E of NRS.]~~ *is a natural person who:*

(a) Is licensed in good standing as a mortgage agent pursuant to NRS 645B.410;

(b) Is designated by a mortgage banker to act on behalf of the mortgage banker and to supervise the conduct of the business of the mortgage banker and the mortgage agents associated with or employed by the mortgage banker;

(c) Will be present at the licensed office location for which he or she is the qualified employee the majority of the time that the office is open to the public; and

(d) Has met the requirements of the S.A.F.E. Mortgage Licensing Act.

3. ~~[The approval issued by the Commissioner entitles the qualified employee to act pursuant to the terms and conditions of the license issued to the partnership, corporation or limited liability company by the Commissioner pursuant to chapter 645E of NRS, but only as a qualified employee of the partnership, corporation or limited liability company, and not on his own behalf.~~

~~—4.]~~ If the qualified employee designated pursuant to subsection 1 is not approved by the

Commissioner pursuant to subsection 2 or ceases to be a qualified employee ~~[as defined in NAC~~

~~645E.030, the partnership, corporation or limited liability company~~, *the mortgage banker* shall designate another qualified employee pursuant to subsection 1 not later than:

(a) Thirty calendar days after the date that:

(1) The Commissioner notifies the ~~[partnership, corporation or limited liability company]~~ *mortgage banker* that the initial qualified employee designated pursuant to subsection 1 is not approved; or

(2) The qualified employee ceases to be a qualified employee ~~[as defined in NAC 645E.030;]~~ *pursuant to this section*; or

(b) A date after the date described in paragraph (a) if agreed to by the Commissioner.

Sec. 23. NAC 645E.315 is hereby amended to read as follows:

645E.315 1. Any material change in the ownership, management or principal employees of a mortgage banker at its principal office or a branch office must be reported to the Commissioner not later than 30 calendar days after the change.

2. If a person acquires stock or ownership in a mortgage banker as a result of a transfer that constitutes a change of control : ~~[pursuant to NRS 645E.390;]~~

(a) A financial statement or personal interrogatory of the prospective owner, partner, corporate shareholder, manager or employee must be submitted to the Commissioner for his consideration;

(b) The person may not participate in the management of the mortgage banker until the Commissioner has approved the transfer; and

(c) The mortgage banker may not change the location of its principal office or a branch office until the Commissioner has approved the transfer.

3. *A mortgage banker may not close his or her principal office or a branch office until:*

(a) The mortgage banker has returned his or her license to the Division; and

(b) The Commissioner has approved the closure.

4. The request for approval of the closure of the principal office of the mortgage banker or a branch office must contain the following information:

(a) The status of any incomplete applications for mortgage loans and the manner in which the loans will be finalized;

(b) An accounting of any trust account maintained by the mortgage banker and the plan for distribution of money in the account;

(c) If any mortgage agent associated with or employed by the mortgage banker terminates his or her association pursuant to NRS 645E.292, evidence of the termination; and

(d) In regard to the records of the mortgage banker maintained pursuant to subsection 1 of NRS 645E.350:

(1) The address where the records will be maintained; and

(2) The telephone number and mailing address of the person who will be responsible for the maintenance of the records.

5. The Commissioner may require the person acquiring stock or ownership in a mortgage banker pursuant to subsection 2 to meet the requirements of the S.A.F.E. Mortgage Licensing Act, including, without limitation, submitting information to the Registry.

6. As used in this section, “change of control” has the meaning ascribed to it in NRS 645E.390.

Sec. 24. NAC 645E.320 is hereby amended to read as follows:

645E.320 1. Except as otherwise provided in this subsection, the Commissioner will charge and collect a fee of \$60 per hour from each mortgage banker for any supervision,

examination, audit, investigation or hearing conducted pursuant to chapter 645E of NRS. The Commissioner may charge a fee equivalent to the estimated or actual fee charged to the Division for the time of an attorney required in any examination, investigation or hearing conducted pursuant to chapter 645E of NRS.

2. The Commissioner will bill each mortgage banker upon the completion of the activity for the fee established in subsection 1. The fee must be paid not later than 30 calendar days after the date ~~[the bill is received.]~~ *of the invoice*. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each complete month, or portion of the last month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. Upon written request by a mortgage banker, the Division will provide an accounting of the time billed to the mortgage banker pursuant to this section.

Sec. 25. NAC 645E.500 is hereby amended to read as follows:

645E.500 1. The Commissioner may refer to *and share information with* the appropriate federal or state agency for investigation and appropriate action each suspected violation of:

(a) The Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f, inclusive, including, without limitation, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, or Regulation Z, 12 C.F.R. Part 226.

(b) The Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 to 1691f, inclusive, or Regulation B, 12 C.F.R. Part 202.

(c) The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 to 2617, inclusive, or Regulation X, 24 C.F.R. Part 3500.

(d) The S.A.F.E. Mortgage Licensing Act.

2. For the purposes of NRS 645E.670, a mortgage banker commits a violation if the mortgage banker:

(a) Engages in a deceptive trade practice as defined in chapter 598 of NRS;

(b) Fails to refund any fees collected in excess of the actual cost the mortgage banker incurs or pays for any appraisal, credit report or any other product or service provided by a third party in connection with the making of a loan; or

(c) Violates a provision of:

(1) The Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f, inclusive, including, without limitation, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, or Regulation Z, 12 C.F.R. Part 226.

(2) The Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 to 1691f, inclusive, or Regulation B, 12 C.F.R. Part 202.

(3) The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 to 2617, inclusive, or Regulation X, 24 C.F.R. Part 3500.

(4) *The S.A.F.E. Mortgage Licensing Act, including, without limitation, section 1505(e) of the Act regarding the submission of reports of condition to the Registry.*

(5) Any other applicable federal or state law or regulation related to mortgage transactions.

Sec. 26. NAC 645E.231 is hereby repealed.

Sec. 27. Pursuant to subsection 1 of section 85 of Assembly Bill No. 523, chapter 474, Statutes of Nevada 2009, at page 2693, a person who holds a license as a mortgage banker under chapter 645E of NRS on or before July 31, 2009, and who, because of his or her lawful activities,

is required to be licensed as a mortgage agent must obtain a mortgage agent's license on or before July 31, 2010.

TEXT OF REPEALED SECTION

645E.231 Maintenance of permanent sign at each place of business. A mortgage banker shall maintain a permanent sign that includes the name of the mortgage banker at each place of business of the mortgage banker, including, but not limited to, each branch office of the mortgage banker. This sign must be:

1. Readable from the nearest public sidewalk, street or highway; or
2. If the place of business of the mortgage banker is an office building, posted on the building directory of the office building or near the entrance to the office building on the exterior of the building.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
LCB FILE NO. R038-10**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 645E.

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Copies of the Proposed Permanent Regulation, notice of workshops and notice of intent to act upon the regulation were e-mailed to persons who were known to have an interest in the Proposed Permanent Regulation, as well as any persons who had specifically requested such notice. Additionally, Open Meeting Notices were also posted and provided to all parties. These documents were also made available at the Division of Mortgage Lending’s Website at www.mld.nv.gov, mailed to the State Library and all county libraries in Nevada, and posted at the Division’s offices.

The Division submitted R038-10 to the Legislative Counsel Bureau for review on March 15, 2010. On March 30, 2010, an initial workshop on R038-10 was held in Las Vegas, which was simultaneously video-conferenced to Carson City. Thereafter, on or about May 28, 2010, following receipt of R038-10 from the Legislative Counsel Bureau, the Commissioner of the Division (Commissioner) posted a notice of hearing of intent to act upon a regulation, which was held on June 30, 2010. The Proposed Permanent Regulation incorporated suggestions of interested persons who attended the workshop and hearing, as well as written comments received by the Division. Minutes of the workshops and hearing are attached hereto.

A copy of the summary of the public response to the Proposed Permanent Regulation may be obtained from the Division of Mortgage Lending, 7220 Bermuda Road, Suite A, Las Vegas, NV 89119, or by e-mailing a request to jwaltuch@mld.nv.gov.

2. The number of persons who:

	<u>CC</u>	<u>LV</u>
Attended workshop: 3-30-10	1	4
Testified at workshop	0	4
Submitted written comments:	0	0
	<u>CC</u>	<u>LV</u>
Attended hearing: 6-30-10	1	5
Testified at hearing	0	2
Submitted written comments:	0	1

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary may be obtained in the same manner as provided above. The Commissioner incorporated changes to the Proposed Permanent Regulation based on comments made at the workshops and hearing.

The industry comments at the hearing included:

1. Request to clarify who needed to be bonded and whether the bond form would change from the proposed version.
2. Request to clarify if a person obtained a license in another state and registered on NMLS, if they could then do loans in all states.
3. Request to clarify the difference between a mortgage banker and a mortgage broker license.
4. Request to clarify when a loan processor would need to be licensed as a mortgage agent.
5. Request to clarify if the bond secured by the mortgage banker would meet the bonding requirement for an associated mortgage agent.
6. Observations that Nevada statutes should be changed to allow a separate chapter for companies who only do commercial loans since the SAFE Act pertains to residential mortgage originations and the testing and education are geared only towards residential transactions.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The Proposed Permanent Regulation, as reviewed and revised by the Legislative Counsel Bureau, was adopted with the exception of the following changes, which were incorporated following commentary at the hearing:

1. Sec. 10(1). The word “must” was changed to “shall”.
2. Sec. 10(1)(a). The word “and” was changed to “or”.
3. Sec. 11(3). The words “suspended” and “revoked” were reversed.
4. Sec. 14(3). A comma was stricken after “NRS”.
5. Sec. 15(4). The word “that” was replaced with “which”.
6. Sec. 18(1)(g)(f). Subsections “g” and “f” were stricken.
7. Sec. 19(1)(c). Subsection “c” was stricken.
8. Sec. 21(4)(b). This subsection was revised to now read, “The address and telephone number, and either the license number or unique identifier that the mortgage banker has on file with the Division.

5. **The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

Business which it is to regulate:

Both adverse and beneficial effects:

a. Adverse effects

The Commissioner of the Division of Mortgage Lending has determined through the initial review process that the proposed regulation may impose a significant and direct economic burden upon a small business or restrict the formation, operation or expansion of a small business.

NRS 645F.292 requires the Commissioner to adopt such regulations as necessary to comply with the requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). The SAFE Act requires mortgage agents to secure a bond, pay into a recovery fund, or maintain a prescribed net worth. Nevada does not have a recovery fund and individuals maintaining net worth and verifying the net worth would not be practicable. The feasible option is bonding which may be secured by the mortgage banker on behalf of the mortgage agents associated with the company. The proposed regulation requires a licensee who arranges \$20,000,000 or less per year in loans to obtain a surety bond in the amount of \$50,000; annual loan production exceeding \$20,000,000 requires the licensee to obtain a \$75,000 bond. The Commissioner attempted to keep the amounts reasonable to curtail costs to small businesses and to be consistent with bonding amounts prescribed in NRS 645B.042 for mortgage brokers.

Additionally, the proposed regulation requires licensees to register on the Nationwide Mortgage Licensing System and Registry (Registry). The SAFE Act requires licensees to register on the Registry. The Registry assesses fees for registration; however, these fees are not viewed as significant. Companies must pay \$100 annually to the Registry for registration for principal offices, \$20 for each branch, while mortgage agents pay \$30 annually as well as \$30 for changes of associations. The additional Registry fees include a \$39 fingerprint retrieval fee, a \$94 mandatory federal test fee and a \$69 Nevada State test fee.

The fees assessed by the Registry do not inure to the benefit of the Division.

(b) Beneficial effects:

The beneficial effect of the Proposed Permanent Regulation on the industry will be increased professionalism, knowledge and standards within the industry. Additionally, NMLS allows businesses and mortgage agents who are licensed in multiple states to manage their Nevada license, as well as their licenses with other state regulatory agencies, with a single record conveniently maintained in an electronic form and accessed through a secure website.

Economic Effect on the Public:

Both adverse and beneficial effects:

(a) Beneficial effects: The Proposed Permanent Regulation will benefit the public by allowing the public a single contact point to view individuals and companies they are transacting business with to determine if the person is properly licensed in any jurisdiction they are conducting business in, as well as determine if the person has been subject to any administrative actions by any jurisdiction.

(b) Adverse effects: The Proposed Permanent Regulation is not anticipated to have any adverse economic effect on the public.

Both immediate and long-term effects.

The immediate and long term effects are anticipated to be the same.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There are no anticipated estimated costs to the Division for enforcement of the adopted regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed permanent regulation does not overlap regulations of other state or governmental agencies known to the Division at this time. However, the proposed regulation institutes the mandatory provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The Proposed Permanent Regulation does not include provisions which are more stringent than federal regulation, which are known to the Division at this time.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There are no new fees related to the Proposed Permanent Regulation; however, the Registry imposes fees as covered above.

10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a

small business? What did the agency use in determining the impact of the regulation on a small business?

The Proposed Permanent Regulation may impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business. However, the provisions in the Proposed Permanent regulation are mandated by the SAFE Act.

To evaluate the economic burden of the Proposed Permanent Regulation on a small business, the Division provided the Proposed Permanent Regulation to small businesses which may be impacted by the Proposed Permanent Regulation and reviewed the proposed language in the regulation. One attendee to the hearing expressed concerns related to the impact on his business, however he e stated that he understood that federal law mandated the requirements.



JIM GIBBONS
Governor

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND
INDUSTRY
DIVISION OF MORTGAGE LENDING
7220 Bermuda Road, Suite A
Las Vegas, NV 89119
(702) 486-0780 Fax (702) 486-0785
www.mld.nv.gov

DIANNE CORNWALL
Director

JOSEPH L. WALTUCH
Commissioner

Public Hearing for the Amendment and Adoption of a Permanent Regulation for Mortgage Bankers
645E Legislative Council Bureau File No. R-038-10

Date: June 30, 2010

Time: 10:30 am

Location: Las Vegas
The Bradley Building
2501 E. Sahara Avenue
2nd Floor Conference Room
Las Vegas, NV 89104

Video-Conferenced to:
Dept. of Business & Industry
788 Fairview Drive
Hearing Room
Carson City, NV 89701

Present: In Las Vegas:
Commissioner Joseph L. Waltuch
Christine Parvin – Deputy Attorney General
Susan Slack – Administrative Assistant II

Kyle Nagy, Keith Russell, Stacey Modwijiw, Linda Williams, Steven Mumford

In Carson City:
Sheila Walther- Supervisory Examiner
Paula Scotland – Education
Colleen Hemingway – Deputy Attorney General

Paul Danner and Jenny Reese

Discussion:

Commissioner Waltuch: This is a public hearing regarding the adoption of proposed regulation R038-10 as relating to mortgage bankers licensed under NRS 645E. Since everybody here was already at the earlier hearing, I am going to dispense with going through the litany of what this hearing is all about and just go through this proposed regulation section by section.

Sheila Walther: I will go through the changes. Paula just caught one on page 1. They have “changing” and it should be “change”. The next one is on page 4 Subsection 10. We are changing the word “must” to “shall” to be consistent with B. In A “and” to “or”. On Section 10 B we are changing “registered” to “licensed” and in 2 B we are taking out “as an employee” just like we did on the B.

Commissioner Waltuch: Just for everybody’s edification, these changes are all consistent with what we did with the B.

Sheila Walther: I want to point out that is the only section in the B chapters that were subsection 7 that described what the do’s and don’ts of an employee is and then there is subsection 15 – This just applies to – it doesn’t have a subsection 7 – if you are doing activity as a mortgage agent, you are subject to the B chapters. So loan officers who are working for bankers have to look over to the B for some of the guidance on the do’s and don’ts. Now everything that is in B is in E because really they are governed by B as a mortgage agent.

Linda Williams – When you take out “as an employee” isn’t that how the SAFE Act is written if they are an employee and they are W-2 and exempt? Why would we take that out?

Sheila Walther: It doesn’t say “an employee” in SAFE Act. We struck that last night because it is not in SAFE Act. SAFE Act does distinguish between someone that hires a W-2 reporting to someone that is licensed, only doing clerical processing. If they are an independent contractor, they are doing the same thing, but they have to be licensed as a mortgage agent. That is covered in the B chapter that we went over this morning.

Linda Williams: If I am going to write the section to explain it to students, would I just instead of saying “as an employee” because if I remember SAFE Act it says as a W-2 employee or something like that...

Sheila Walther: A loan processor could be an independent contractor. Then they are not an employee. They are an independent contractor but by virtue of being an independent contractor, they need to be licensed. That was really in conflict because our people that are ...

Commissioner Waltuch: Let me interrupt you. Let me read you the definition from the SAFE Act. The term loan processor or underwriter means an individual, not an employee, who performs clerical duties at the direction of and subject to the supervision of ...

Sheila Walther: SAFE Act is not written all that well. It’s kind of confusing.

Linda Williams: If they are a 1099, they would still have to be licensed because they are not a W-2. Is that the distinction?

Commissioner Waltuch: Correct.

Sheila Walther: Next change. Page 5 section 11 subsection 2, third line should be “plea” not “pleas”. The second line switched revoked and suspended just like we did in B. Page 7 there is an extra comma next to NRS. Page 11 subsection 15 changing the word “that” to “which”. Page 14 Section 18 the two top G and H are being stricken. G is being stricken – no copy of the lease. H was really consistent with a whole section that is stricken out of the E chapters where a banker is required to maintain signage at the place of business. That is being stricken out which will then open the door for bankers to have home offices. We are taking out the requirement to have a sign. Both G and H are coming out on page 14. On page 15 for the branch 2C is coming out. No signage requirement. Those are the changes so far. However, we will be checking with HUD related to any requirements to have the unique ID number on advertisements as we discussed during the “B” hearing, so we may be making the same change in E.

Commissioner Waltuch: For the record we are going to go through this on a section by section basis. (No comments on Section 1 through 13).

Kyle Nagy: On Section 14 – If I read this correctly, the mortgage banker will have the bond, but the individual agents, as long as they are reviewed and monitored by the mortgage banker, are not required to have a separate bond.

Commissioner Waltuch: No if they are covered on their employer’s bond.

Kyle Nagy: If we identify them on our bond, they will not have to have their own bond.

Commissioner Waltuch: That’s correct. Technically, there are two choices. You can have all of your agents have their own individual bond and the company not have a bond or the company can have a bond and it covers everybody. It should be cheaper. (No comments on 15 through 20)

Kyle Nagy: Number 21 Section 4a – the complete name of the mortgage banker – do we have to list our full name or can we use our DBA?

Commissioner Waltuch: You use whatever your registered name is.

Sheila Walther: A lot of people just use the DBA. You don’t have to have the whole name.

Commissioner Waltuch: Provided that is the name registered with us as your DBA. (No comments on 22 through 27). Anybody want to discuss the deletion

of that section? Boy that was fast. Just so everybody understands, we are trying to make these regulations under E consistent with B as possible so that if there is for any reason next session a move to break out commercial lenders into a separate E, the regulations that we currently have would all just move over to B and we would have new regulations. We would have to do brand new regulations that would only pertain to commercial.

Kyle Nagy: I would like to make the same general statement that I did in the hearing before. Our goal with the assistance and working with the Division is to separate and identify a commercial designation that allows us not to be regulated and provide or obtain the education and licensing for the SAFE Act. We hope to work with you during the next session to do that.

Commissioner Waltuch: You are not asking for no regulation are you?

Kyle Nagy: We are asking to be exempt.

Commissioner Waltuch: Exempt from the SAFE Act stuff.

Kyle Nagy: Not exempt from the regulators, but from the SAFE Act. We expect you to regulate us, but just do not make us comply with the SAFE Act.

Commissioner Waltuch: Ok. Is there anybody up North that wished to make any comments on the record on the proposed regulation? Assuming we adopt this regulation, there will be some minor tweaks that have to go back to Legislative Council Bureau. Then it goes to a legislative commission made up of members of both the Senate and the House who review the proposed regulations and they make their decision if they will agree to it or not. That commission does not meet until August 13.

Sheila Walther: I have been in touch with Legislative Council Bureau and they will call a special commission subcommittee because of the requirement to meet the mandated change date.

Commissioner Waltuch: We have to have these done and up and running by July 31st. So in order to get to the legislative commission which doesn't convene until August 13th, they have to call a special meeting of a subcommittee to review the regulations. Assuming they review it and approve it, they will then go to the Secretary of State for certification. Once certified it becomes official. We are hoping that will all be done by July 31st. Otherwise, we are technically out of compliance with SAFE Act and HUD requirements.

Kyle Nagy: Will that special commission be open to the public?

Sheila Walther: Yes, it is. I will let you know. I will blast it out to the industry when we find out when that is going to be if you want to attend.

Commissioner Waltuch: Are you going to go up there and try to get these things killed?

Kyle Nagy: I am not being confrontational. No. I understand the reason for the SAFE Act. It protects 99% of consumers on the residential side. We clearly understand that. The group that we are talking with, we understand that it is better for the majority of the population and that we are a small minority. Allow it to be passed. We are working to comply with it. For the next session when there is time to actually rewrite and understand what is best for everyone then attack it.

Commissioner Waltuch: That is fine. No problem.

Linda Williams: I am getting a lot of questions about renewals. People that were going to joint the SAFE Act on October 1 and they require everyone to renew by December 31. If we come in in October, they wouldn't necessarily have to renew again until December 31 of 2011. What do they need to take for that little gab between October and December if that is when their normal license renews?

Sheila Walther: We are going to renew on NMLS in December of 2011. We have to do it that way because statutorily, all agents still continue to expire one year after they are issued a license. They will continue to have to do everything they have always done and send in their renewal to us, their 10 hours, and their child supports statements but part of their renewal requirement is that they have to be on NMLS. We will verify that too. They will have to renew say on October 1st 2011 and then they are going to have to renew again December. They will have to pay twice. Our brokers are going to pay twice.

Linda Williams: You said 2011. I am talking 2010.

Sheila Walther: They are not going to renew on NMLS until 2011. They will continue to renew with us throughout 2011. They will have to renew again on NMLS once our law changes to reflect that 12/31 date. It is going to be what it is. They have to all get on to NMLS. If a new licensee comes to us on October 2nd, they are going to have to do that application through NMLS and pay the NMLS fees as well as ours and just go through that process. When the existing licensees go on NMLS, there are going to have to pay NMLS fees twice. They consider it an application fee. Its \$30 and a first year registration fee of \$30. They are going to be paying \$60. The companies are going to pay a \$100 application fee and a \$100 first year registration fee. These are NMLS fees. Bankers are lucky because you expire 12/31 already. You are not going to get hit like the brokers are. If they do not go in and create that full record by 11/12 and pay those NMLS fees and it comes 11/15 and they go on the NMLS, that window is closed. They will have to reapply with the State. Not only register with NMLS, they are going to reapply, pay \$185. It will be required to meet all of the requirements of a new

licensee. If you are trying to express something to your students, it will be that they have that 6 week window to go on and create that full record on NMLS and pay those NMLS fees. They still have to send all of that stuff to us because our law can't reflect that 12/31 date until next session and they make that change.

Commissioner Waltuch: That's assuming they make the change.

Linda Williams: Can you repeat that?

Commissioner Waltuch: The answer to your question is Yes. Currently, mortgage agent's licenses expire one year from the date they were issued. So for your questions purposes, if a mortgage agent is licensed with us in 11/2010, that license renews in 11/2011. But because the NMLS requires you enroll by 12/2011, they will re-renew.

Linda Williams: So we will really have dual renewals in 2011.

Sheila Walther: The NMLS renewal period is 11/1 through 12/31. Potentially, the November person will just renew once. October person is going to have to do it twice.

Commissioner Waltuch: Everybody has to know that we don't get any fees from the NMLS.

Linda Williams: A lot of what I am getting in the industry is that they are budgeting \$10. I have to tell them is \$92 for national, its \$69 for the State test. When we get into all of the education fees, I have been at a loss with the renewal fees on what that's going to cost. Is there a chart that you could do? That would be helpful.

Commissioner Waltuch: Some of the fees are listed in the Small Business Impact Statement behind you.

Sheila Walther: The blasts I send out detail all of the fees.

Linda Williams: If you could send out a spread sheet or something, that would be great for people to budget.

Sheila Walther: They are going to pay \$60 when they go on NMLS to register. They are going to pay \$39 for fingerprints. If they are having the state certify that they have taken the test, it is going to be \$5. To certify the Education is \$15.

Linda Williams: I am talking about next year. In 2011, if they are going to renew with you ...

Sheila Walther: They are going to pay \$100. October 1st, they are going to pay \$60 and those other fees I talked about. If they expire in March, they are going to pay \$100 to us. They are going to have to have the 10 hours of education and send in their package and they are going to come around December and they are going to pay \$100 again and NMLS \$30. Every time they change brokers they pay \$30 on NMLS. They pay our \$10 and they pay NMLS \$30. Switching around between brokers is going to get more expensive.

Commissioner Waltuch: Can you put together a chart of all of this stuff?

Linda Williams: That would really be helpful.

Commissioner Waltuch: I just want everybody here to understand that none of this is by our doing.

Linda Williams: I know that. I always tell everybody that complains that it is not Mortgage Lending Division. This is a federal law. Go blame Bush.

Paula Scotland: Have you gone on the NMLS resource center?

Linda Williams: Yes, but it does not cover the gap.

Kyle Nagy: I was just trying to get a grasp of the fees as well. This is the first time our agents will be in the system. They will have to register by July 31st, pay a fee and re-register at the beginning of the year. Correct?

Sheila Walther: They will have to register with NMLS and pay the \$60. I will certify that they have taken the PSI and certify with State so that's another \$20 for those certifications and if they got their license today, one year from today they are going to have to send in their renewal package to us which includes a \$100 fee and then come 2011 by Dec. 31st 2011 they will have to go on NMLS and pay annual fees, plus our law will change the expiration date, so the license, even though they renewed it in June, it is only going to be good for 6 months and it is going to renew again in December, but thereafter it will be a full year. There are going to be additional costs.

Commissioner Waltuch: The transition period is going to be messy. Are there any other comments? Thank you all for coming.

Hearing Adjourned at 11:00 am

Submitted by Susan Slack



JIM GIBBONS
Governor

STATE OF NEVADA
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7220 Bermuda Road, Suite A
Las Vegas, NV 89119
(702) 486-0780 Fax (702) 486-0785
www.mld.nv.gov

DIANNE CORNWALL
Director

JOSEPH L. WALTUCH
Commissioner

**Workshop to Solicit Comments on Proposed Permanent Regulation for Mortgage Bankers
645E / AB 523 / R-038-10**

Date: March 30, 2010

Time: 10:45 am

Location: Las Vegas
The Bradley Building
2501 E. Sahara Avenue
2nd Floor Conference Room
Las Vegas, NV 89104

Video-Conferenced to:
Dept. of Business & Industry
788 Fairview Drive
Hearing Room
Carson City, NV 89701

Present: In Las Vegas:
Commissioner Joseph L. Waltuch
Christine Parvin – Deputy Attorney General
Susan Slack – Administrative Assistant II

Terry Dachnowski, Rita Lee, Tom Lee, Linda Williams, Lou Filippo

In Carson City:
Sheila Walther- Supervisory Examiner
Paula Scotland – Education
Colleen Hemingway – Deputy Attorney General

Teresa McKee

Discussion:

Commissioner Waltuch: We are here to discuss proposed regulation R038-10. This is a public workshop pertaining to Chapter 645E pertaining to Mortgage Bankers and compliance with the federal Secure and Fair Enforcement of Mortgage Licensing Act of 2008 and Nevada's Assembly Bill 523 of the 2009 Legislative session. I am going to turn this over to Sheila Walther who is our

Supervisory Examiner and who is the Division's point person for getting us up and running on the Nationwide Mortgage Licensing System (NMLS) and getting our regulations in compliance with the SAFE Act.

Sheila Walther: Do we have new people in the room down there?

Commissioner Waltuch: We have one.

Sheila Walther: Does that one person understand the registry and the NMLS and he requirements? Do you want me to go over the SAFE Act and how we came to where we are today?

Tom Lee with OCM Bancorp, Inc.: I came in to learn all of this stuff. If it is OK with everybody else we can go through with whatever we need to.

Sheila Walther: The reason we having this workshop is because in 2008 the SAFE Act set out criteria that all states must comply for licensing of loan originators, the criteria for issuance of a license, the criteria for testing, education and the criteria for them to get a unique identifier number through the Nationwide Mortgage Licensing System and Registry. The registry had been in effect for 2 to 3 years before the SAFE Act was passed and they had a handful of states that participated. It is a national registry of loan originators. They monitor the education and the testing. Nevada was actually the 50th state to sign the letter of intent to join NMLS. We are in the last group of states to transition on to that system. We anticipate transitioning onto the system for all of our existing licensees. On October 1st we are going to open it up for 60 a day window for people to go in our existing licensee base to go in and create new records. We also are going to have new licensees apply through the NMLS system. However, due to changes that are needed next session, because our renewal dates are not consistent with NMLS – in NMLS world everything expires on December 31st. Our mortgage agents currently by law expire one year after issuance of the license so they are peppered through the entire calendar year. Our mortgage brokers expire annually on June 30th. By statute we need to change those to the NMLS renewal period which is everything expires on December 31st annually. We are mandated by the SAFE Act which requires all of our licensees to get that unique identifier number. The division along with every other state received a deficiency letter from HUD where our laws and practices were deficient for fully complying with SAFE Act. A lot of the requirements that were put into these proposed regulations were based on the requirements of SAFE Act, areas of concern that HUD pointed out, and we are trying to address that. Joe and I have spoken with Legislative Council Bureau and the requirements in AB523 that passed last session requires that the loan originators or mortgage bankers have to be licensed as mortgage agents and by virtue of these regulations have to go on to the registry. We are also proposing in this to have all of our bankers go on in order to logistically monitor it. In NMLS world, they call them sponsorships. They sponsor their loan officers that work for them. The company is the one that sends

the termination statements. That licensing scheme that we have in place here in Nevada pretty much mirrors the NMLS in order to logistically monitor and track our licensees. We need all of our licensees up on that system. There is a lot of duplication between the proposed regulations for the E chapter R038-10 as well as the R035-10. They are going to pull out of the banker regulations some of the language in it will then – you will look over to the B chapters. AB523 required the loan officers to get licensed as mortgage agents. It referenced the sections in the law that covers licensing requirements. However, once they are licensed, they are subject to all laws pertaining to mortgage agents that are in the B. In the perfect world, maybe one chapter is needed now because there is so much you have to look in E you have to look into B in order to see what is required to hold that mortgage agent license. Some of the language we see in here is duplicated in the language in the one that we heard earlier. I don't know what sections will be taken out of this, but this is kind of a start.

Commissioner Waltuch: If you go to our website which is www.mld.nv.gov, towards the end of 2008, we put a synopsis of the SAFE Act on the website in one of the letters. The other thing that we need to point out is that all of the only pertains by federal law to 1 to 4 family dwelling properties. As Sheila said, we are going to put all of our mortgage bankers and brokers in who are even doing strictly commercial on to the system because we can not have a separate system just for 8 or 10 people. Although technically not required, they will be on it as well.

Sheila Walther: I did not receive any written comments on the banker one. Some of the things in the banker – there is a bonding requirement which is required by SAFE Act. SAFE Act required that all loan originators be bonded. CSPA is working with HUD to have that requirement fall to the company that employs those loan originators, so the company would be named on the bond as well as all associated mortgage agents. So they would meet the criteria. SAFE Act said that you could have a recovery fund, a bonding requirement, or a net worth. Recovery fund – there was a bill passed last session that established a recovery fund. It was vetoed by the Governor and it was not overwritten. That would require a change in the law to do. Those funds got swept to help the general funds. Sometimes that is not your best way to have available recourse for people. So, we are stuck with the bond. The bond is in here. There is a minimum of \$50,000 with a maximum of \$75,000 and it is consistent with the state requirement that it be tiered according to the volume of activity that is happening. I had received some sample language through CSPA of what other states had implemented. I will share with you that our amounts are at the very low end of what I saw. We are trying to keep the costs down as much as possible. We have the requirement that you can not renew a license unless you pay all of the fees that you owe the State. We have some guidelines for qualified employees embedded in this. We established financial solvency guidelines. We qualified what “adverse change in financial condition” means. In our statutes, we have the ability as a division to do exams but the statutes that there is an ability to do an exam every other year as

long as certain criteria are met. One of the criteria is that they have not had an adverse change in financial condition. The requirement in this regulation is to bring Nevada in to compliance with SAFE Act. Bankers expire annually December 31st. They are consistent with the SAFE Act. That works out well. In the interim every existing licensee will have to go on and create the record. There are requirements for education. There are requirements for testing. The bankers are easier than the brokers because the bankers just coming on in order to get that initial license. NMLS allows the state to certify individuals that have taken the test – the state portion of the test and individuals that have completed at least 20 hours of education – because that is the SAFE Act mandate. We have 30 here in Nevada. We will be able to certify those agents that have taken the education, passed the Nevada section of the test and they won't have those additional requirements once they transition on to NMLS. Every loan originator is going to have to take the federal test. There is a \$94 fee. Bankers have never had the requirement for education. They have never had the requirement for tests. This is really embedded in the requirement to hold a mortgage agent license. There is in 523 a requirement for anybody that works as a mortgage agent for a banker now has to hold that license and you would look over to the other chapter 645B for the requirements.

Commissioner Waltuch: Can you go to Section 16-1? The end of the first sentence – I think we need to build into this that the division can file a claim on a bond without having to go to court to do so. I have some language back at the office for that one. That is something I will ask the legislature to change for B and A as well.

Colleen Hemingway: It is in the statutes – right?

Commissioner Waltuch: This comes right out of the statute. It does not say anything about the Division.

Terry Dachnowski: When hiring a loan officer, do they have to be bonded?

Sheila Walther: You would have to get a bond and the bond would say “ABC Banker and all associated mortgage agents” as a group. One thing that SAFE Act does not allow is something in lieu of a bond like a CD or a letter of credit. Under SAFE Act it has to be a bond.

Terry Dachnowski: That is as of October?

Sheila Walther: Once this is law – we have not discussed the transition period for placement of the bond. We are required to be in compliance with SAFE Act by July 31st. We are hoping to have these proposed regulations become law. There is going to be some transition language in there. I would imagine you can't get a bond in a day. It pays to shop around. We have a list of potential bonding companies. We don't endorse any of them, but it gives you a starting place.

Commissioner Waltuch: My guess is that the bond is going to have to be in place when these regulations come down. That is something that you want to start with now. The bottom line is the SAFE Act says that all loan originators have to have a bond. If you had 10 loan originators working for you, you in theory could have 10 bonds. HUD is permitting a blanket. Add the premiums for 10. Add the premium for 1. You know. It makes economic sense in my mind to do one to cover everybody. But start now.

Sheila Walther: I will tell you and bonding companies and surety companies are kind of anal. They want to see the form. The form is embedded in these proposed regulations. You can point them to this, but this is not law yet. I must have talked to 50 different insurance companies. We got several bonds in that were deficient. We have up on our website, the bond for the mod companies. We have a lead in paragraph explaining the fact that is had to cover all associated licensees. It is obviously direction. It is not part of the form. Yet we got several bonds in that have that paragraph at the top. Just so you know if you go get a bond in advance of this becoming law it might be difficult because they are going to want to see what the form looks like. We do have these proposed regulations posted on our website.

Commissioner Waltuch: I will add for the bonding purposes, this bond form is the same as the bond form for brokers, for escrow agents, and for loan modification companies. So if you are using a surety company that is already writing those bonds in this State, they should know what the form looks like.

Sheila Walther: They actually got more specific in Section 14 just because of the headaches we had with the broker bond and they actually spell it out in the law.

Commissioner Waltuch: Any other questions?

Lou Filippo with Accelerated Training: The verbiage on that bond that is going to be required, will that remain the same after October when we go into the NMLS or will that change?

Sheila Walther: Our anticipation is that it won't change. I think we are establishing a tier based on volume. It is consistent with the sample language that I got. The bond form itself – I never had them dictate that had to be in a certain form other than it has to specifically cover the loan officers. We anticipate that this format will be consistent and meet the requirement of SAFE Act.

Lou Filippo: The reason that I am asking that is because it's part of my course. I need to know what I have to change.

Commissioner Waltuch: Actually, there is one change. This is for the education portion of it. If you notice on page 5, right up at the top you have the signature

lines. It says “licensed registered agent”. I think it is on the 645B bond it says “licensed resident agent”. It is supposed to have been “registered” agent. That will take a legislative change. For bonds that we are getting, we are accepting the bonds that say “licensed registered agent”. The reason for the difference is the 9th Circuit Court of Appeals years ago threw out the residency requirement. The laws were changed except when they copied the bond form over into B, they copied the old form. Make sure it says “registered” and not “resident”. Ok, for our 1 new invited guest here, for any topics that you want to discuss that you may not be up on or familiar with, etc. because everybody else here sat through it this morning.

Tom Lee: Why do you have 2 separate ones?

Commissioner Waltuch: Two separate regulations. Two separate workshops. Feel free to ask all the questions you want because that’s what we are here for.

Tom Lee: I just wanted to ask one question. I have been out of the business for just a little bit and I came back in. Under the NMLS, can any loan agent that has registered and passed the test, say in Connecticut, do loans in Nevada?

Commissioner Waltuch: They will still need to have a license in Nevada.

Tom Lee: As long as that have a license in Nevada, they can do that.

Sheila Walther: They would have to comply with education in Nevada. We would recognize that courses they took for that other state – if they had a 20 hour requirement and we have 30, so they would have to take that additional 10 hours. They would have to pass the Nevada test. If they have passed the federal section of the NMLS test, we would recognize that as long as it has been done in the last 5 years. Our licensees are licensed here. They can’t go do loans in California. We need to have both with whatever state they are in. We have resident requirements for our broker agents. But bankers can have offices throughout the United States and their loan officers can hold a license in the home state and have a Nevada license but they need to do everything else that is required for a Nevada license.

Commissioner Waltuch: Does anybody else have any questions? Is there anything we need to discuss on this at this point as well?

Sheila Walther: I will just invite anybody – I will give you my email address it swalther@mld.nv.gov or the Commissioner. We both are on the notices. Send us emails if you have suggested language or any question that did not come to you now comes to you later or whatever. We will be happy to look into it. The purpose of this is to solicit comments to this process. We submitted these to Legislative Council Bureau because of the time frames, this whole process can take months and months – sometimes a year to do. We wanted to insure that we

got this done in time. Legislative Council Bureau is reviewing this draft language. Like I expressed they will be pulling some of this stuff you see today out. Once we get that back from Legislative Council Bureau, we will disseminate that – blast it out to everybody. Some of the comments that were made today, we will discuss and possibly make changes to what Legislative Council Bureau will come up with as well. They understood that we had not had a workshop yet – that we would have comments made that would possibly result in needed changes. We talk all the time. The drafts are in order to make sure we get this right. We don't want to have to go through hopefully another workshop. We can get the language to them and then post it. The law says we have to have the language back from Legislative Council Bureau before we can post the 30 day notice of intent to adopt a regulation. During that period you will have plenty of time to look at it. Then we will hold our hearing. We can make small changes. If there are huge changes that are needed, we may have to go back to Legislative Council Bureau, have them reviewed again and then go through that 30 day period. I am hoping not to do that. Once the Commissioner adopts it, then it goes on the agenda for the Legislative Commission Meeting. I think that there is usually one in June. That is what we are shooting for so that they can approve it. Once they have approved it, then it will get filed with the Secretary of State and it will become law. We will have again some differing sections become effective on different dates in order to do this transition on to this. A lot of the changes – the bankers that are in the room may want to read R035.

Commissioner Waltuch: Tom, do we have your email address?

Tom Lee: Yes.

Commissioner Waltuch: For Lou's purpose and this gets back to Sheila's comment about this takes time – we have R143-08 which is an Escrow regulation from 2008 that is finally sitting up for the next Legislative Commission Meeting. Assuming they meet in June or the end of May, and adopt it, we will have changes to the escrow law that you want to look at for your courses. It takes a while sometimes. Look at the other side. When we did the loan mod stuff, we got it out in 87 days from start to finish. We were able to pull some strings. On other stuff, it can take a long time.

Terry Dachnowski: We are a new mortgage banker and broker in Nevada. I wanted to know on hiring loan officers, in your opinion, is it better to hire them as a mortgage banker or broker? It doesn't seem like there is a difference.

Sheila Walther: My opinion on that is that if you have a branch in the State and you have both a banker and broker, you associate them with the broker.

Terry Dachnowski: Really.

Sheila Walther: Because they can do it all. They can do loans that are funded directly by your company. They can broker loans to other investors. If you associate them with a banker license, they can not do a brokered loan. In my mind any loan officer that is working in an office and holds both licenses and they are in the State of Nevada, they are associated with the broker not the banker.

Commissioner Waltuch: Yes. A broker can bank. A banker can't broker.

Terry Dachnowski: Yes, but they both have to be licensed and they both have to be originating loans.

Sheila Walther: You can do bank loans through your broker license. That is available to you.

Terry Dachnowski: Our Company is a broker and a banker.

Commissioner Waltuch: Thank you. We need revenue, so we appreciate it.

Lou Filippo: I just have a comment. I just want to thank you guys up in Carson City. I know you guys are under the gun for a lot of reasons. Every time that I have dealt with you people, you have always been very very helpful. I want to thank you for that. I know sometimes you don't get a lot of kudos.

Commissioner Waltuch: Hearing no other objections, I am going to adjourn this meeting. Thank you all for attending and putting up with us.

Workshop Adjourned at 12:05 pm

Submitted by Susan Slack