
Government of the District of Columbia



Department of Insurance, Securities and Banking

Testimony of
Thomas E. Hampton
Commissioner

A Public Hearing

ON

*“Mortgage Lender and Broker Amendment Act
of 2009”*

Committee on Public Services and Consumer Affairs
Muriel Bowser, Chairperson
Council of the District of Columbia

February 27, 2009

John A. Wilson Building
1350 Pennsylvania Avenue, NW
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Good Morning Chairperson Bowser, Members of the Committee on Public Services and Consumer Affairs, and Committee staff. I am Thomas E. Hampton, Commissioner of the Department of Insurance, Securities and Banking. Thank you for providing me with the opportunity to present testimony today on Bill 18-133, the “Mortgage Lender and Broker Amendment Act of 2009.”

With me today is Howard Amer, Associate Commissioner for Banking. We are very grateful to the Committee, and especially to you, Chairperson Bowser, for your willingness to move ahead so promptly with the permanent version of the Mortgage Lender and Broker Amendment Act of 2009 (“Bill”) which has been enacted on an emergency and temporary basis in Council Period 17.

Enactment of the Bill is time sensitive given that DISB must be in compliance by August 1, 2009, with certain requirements established by the Nationwide Mortgage Licensing System. The Bill would amend the District’s existing mortgage law in order to implement the requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act otherwise known as the “SAFE Act”, which was signed into law July 30, 2008. The SAFE Act was enacted to address serious mortgage related problems by requiring states and the District of Columbia to license mortgage loan originators and to join the newly created Nationwide Mortgage Licensing System (“NMLS”). DISB anticipates that the SAFE Act, and this Bill, will significantly enhance our ability to protect District residents who rely on mortgage loan originators to help them find a mortgage.

The SAFE Act also requires that states, including the District of Columbia, become compliant with the law within a year of its passage. If the District fails to comply with the SAFE Act, there is a risk that the Department of Housing and Urban Development (“HUD”) would supersede the District’s regulatory authority and create its own licensing function over mortgage loan originators operating in the District. I believe such a scenario would be detrimental to the District and seriously hinder our ability to protect consumers.

Allow me to provide you with some background and put the Bill in context. DISB is a member of both the Conference of State Bank Supervisors (“CSBS”) and the American Association of Residential Mortgage Regulators. Both of these organizations have worked together to create the NMLS for the regulation of the residential mortgage industry. The NMLS will enhance consumer protection and interstate coordination of supervisory actions, as well as streamline the licensing process for regulators and the industry.

The NMLS will also provide important benefits to state regulators, the mortgage industry, and the home-buying public. Most significant, the system will increase the accountability of mortgage companies and mortgage professionals and assist the regulatory agencies in identifying “bad actors” in the mortgage business. DISB’s participation in the NMLS will make it more difficult for those who wish to use the mortgage industry to victimize consumers to enter or operate within the industry.

The NMLS will also provide consumer access to a central repository of licensing information and publicly adjudicated enforcement actions which

will help to inform consumers before they do business with questionable loan originators. Additionally, the NMLS will aid regulators in supervising mortgage lending and preserve the good names of honest mortgage lenders, brokers and loan originators.

I believe that passage of the SAFE Act has provided the states with a tremendous opportunity. It gives them the opportunity to preserve their authority by enhancing and coordinating supervision with other state and federal agencies, however, it also places extensive requirements on the states.

In order to satisfy the requirements of the SAFE Act, the proposed amendments to the Mortgage Lender and Broker Act of 1996, which were also included in the prior emergency and temporary versions of the Bill, should be made permanent to require the following:

1. Uniform license applications and reporting requirements for state-licensed mortgage loan originators;
2. A comprehensive licensing and supervisory database, the NMLS;
3. Increased accountability and tracking of loan originators;
4. Pre-qualifications, testing and continuing education for loan originators;
5. Addition of a licensing requirement for mortgage loan originators;
6. Denial of licensing of a mortgage loan originator with a record of a felony of any kind within seven years and certain financially-related felonies permanently;

7. Denial of licensing of a mortgage loan originator whose license has been revoked;
8. Establishment of a bonding requirement on companies employing mortgage loan originators
9. Establishment of a duty that loan originators must act in the best interests of the consumer; and
10. Effective collection and disbursement of consumer complaints on behalf of state and federal mortgage regulators.

Additional Amendments Not Contained in the Act

As I noted earlier, since August 2008 when the Department first proposed this legislation, the Department joined the NMLS in December 2008. Working closely with other states and the NMLS administrators, the Department has identified a few issues that need to be addressed in order for the District of Columbia to fully comply with the SAFE Act and the NMLS operating requirements. Further, the Department is proposing a few additional amendments intended to strengthen and enhance the District's supervision of the mortgage industry and further the interests of consumer protection for the residents of the District.

Accordingly, I am submitting for the Committee's consideration the following additional amendments to the Bill. These amendments include the following:

1. Sponsorship Requirement: An applicant for a mortgage loan originator's license must have a sponsor that is a licensed mortgage broker

or mortgage lender. The sponsor will be responsible for the loan originator's oversight, bonding and compliance. This requirement will enhance the Department's supervisory capabilities to review the activities of the mortgage loan originator for compliance during an examination of the sponsoring entity.

2. Exemption Criteria: The current Mortgage Lender and Broker Act of 1996 provides an exemption from licensing requirements for affiliates and subsidiaries of financial institutions. The broad language in that exemption leaves open the possibility for certain entities to escape regulation and licensing. Amended language has been written to eliminate the exemption for bank affiliates and subsidiaries. In conjunction with this proposed amendment, a new exemption for "registered" mortgage loan originators has also been added given that they are supervised by a federal banking agency.

3. Authority of the Commissioner: In order to effectively address the NLMS licensing and operating requirements, the Commissioner needs expanded authority to address extraordinary licensing cases when the applicant provides a good cause explanation.

4. Surety Bond: The language of the existing law's surety bonding requirement needs to be amended to make it clear that the bond runs to the Commissioner for "the benefit of the District" and any person who has been damaged by a licensee as a result of violating the law. This amendment clarifies that the Department may make a claim on the bond on behalf of the District.

5. Prohibited practices: The amendments make the list of prohibited practices that are applicable to loan originators also applicable to mortgage brokers and mortgage lenders.

6. Enforcement: Amendments are necessary to extend the Commissioner's enforcement authority and streamline current hearing procedures to expeditiously address violations of DC laws.

7. Clarifying Amendments: These amendments provide the following clarifications:

a. Remove the word "Superintendent" wherever it appears and insert the word "Commissioner" in its place.

b. Add the phrase "or person required to be licensed" after the word "licensee" in several places.

c. Change the proposed applicability date for certain sections of the Act to be effective with the finalization of an implementing rulemaking, rather than the later of the rulemaking or December 31, 2009, as provided in the emergency and temporary acts. This change will allow DISB to commence operations as soon as implementing rules are in place.

I will provide the Committee with more specific language and justification for these additional suggested amendments in separate documentation.

Conclusion

In conclusion, as Congress takes on the issue of restructuring the financial regulatory agencies, all eyes will be on the state mortgage regulators to judge how quickly and effectively we are able to implement the requirements of the SAFE Act. Through the SAFE Act, Congress intended

to provide the states with the opportunity to preserve its primary role in mortgage supervision and consumer protection.

To this end, the Mortgage Lender and Broker Amendment Act of 2009 provides for the District's participation in the NMLS, more comprehensive regulation of the industry, and compliance with the SAFE Act. Therefore, I encourage your support of this Bill, together with the amendments discussed, so that the District's mortgage supervision program is in compliance with federal law and fosters enhanced consumer protection in the District.

Thank you again for providing the opportunity for me to testify. I will be happy to answer any questions you may have.