

## **BILL ANALYSIS**

S.B. 1004  
By: Carona  
Investments & Financial Services  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 regulates the mortgage industry and requires states to license residential mortgage loan originators; in Texas, licensing is overseen and the industry is regulated by the Department of Savings and Mortgage Lending. Interested parties note that current state law establishes multiple individual licenses to practice residential mortgage loan origination and each contains the same required qualifications for licensure, with residential mortgage loan originators employed by mortgage bankers licensed under a different set of provisions than originators employed by mortgage companies. Interested parties contend that this licensing scheme is inefficient and burdensome to both the industry and the regulating agency. Such parties further contend that there are other areas in current law regulating residential mortgage loan originators, residential mortgage loan companies, mortgage bankers, and residential mortgage loan servicers where modification and updates are necessary.

S.B. 1004 seeks to simplify the mortgage originator licensing process by reducing the multiple individual licenses to one license type for mortgage origination, which would enable a qualified individual to work for either a mortgage company or a mortgage banker so long as the requirements for licensure are met. The bill also seeks to implement other recommended technical changes to better organize and clarify current law regulating such services.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 9, 11, 29, 33, 63, 66, 72, and 85 of this bill.

### **ANALYSIS**

S.B. 1004 amends the Finance Code to reorganize statutory provisions regulating residential mortgage loan companies and mortgage bankers to consolidate provisions governing the licensing of residential mortgage loan originators and to set out provisions regulating residential mortgage loan origination activities of other financial institutions under the jurisdiction of the Department of Savings and Mortgage Lending.

#### **Residential Mortgage Loan Companies**

S.B. 1004, in statutory provisions regulating the licensing of residential mortgage loan companies, the registration of financial service companies, and the licensing of residential mortgage loan originators, removes and transfers statutory provisions that apply specifically to the licensing of residential mortgage loan originators to the bill's provisions regulating both the registration of mortgage bankers and the licensing of residential mortgage loan originators, and reassigns the statutory provisions that apply to residential mortgage loan companies to the bill's provisions relating to such companies. The bill, in its provisions regulating residential mortgage loan companies, includes in the application requirements for licensure as a credit union subsidiary organization the requirement that an applicant maintain a physical office in Texas. The bill establishes that a sponsored residential mortgage loan originator who has been issued an

independent contractor loan processor or underwriter company license is not authorized to originate residential mortgage loans, and clarifies that statutory provisions regulating secondary market transactions, disclosures to mortgage applicants, affiliated or controlled business arrangements, the adoption of standard forms for preapproved mortgage loans, and fees for services in assisting a mortgage applicant in obtaining a residential mortgage loan apply to a residential mortgage loan originator sponsored by and conducting business for a licensed or registered residential mortgage loan company.

S.B. 1004 clarifies that the savings and mortgage lending commissioner is required to conduct criminal background and credit history checks on a person required to be licensed as a residential mortgage loan company and removes provisions authorizing this confidential information to be released by the commissioner with the permission of the applicant or to a person through whom the applicant is conducting or will conduct business. The bill authorizes a residential mortgage loan company license to be renewed on or before its expiration date if the residential mortgage loan company continues to meet the minimum requirements for license issuance, among other specified conditions, and requires an application for renewal to be in the form prescribed by the commissioner. The bill prohibits a person whose request to renew a residential mortgage loan company license has been denied from being eligible to be licensed for a period of two years after the date the denial becomes final, or a shorter period as determined by the commissioner after evaluating the specific circumstances of the denial, and authorizes the Finance Commission of Texas to adopt rules providing conditions for which the commissioner may shorten the period of ineligibility.

S.B. 1004 clarifies that a financial services company is authorized to perform the services of a residential mortgage loan company if the company is registered under provisions regulating residential mortgage loan companies. The bill revises the eligibility requirements for registration as a financial services company to require that a person:

- be a depository institution exempt under the bill's provisions from statutory provisions regulating residential mortgage loan companies and be chartered and regulated by the Office of the Comptroller of the Currency, or be a subsidiary of the institution;
- provide a business plan satisfactory to the commissioner that sets out the person's plan to provide education to its sponsored residential mortgage loan originators, handle consumer complaints relating to its sponsored residential mortgage loan originators, and supervise the residential mortgage loan origination activities of its sponsored residential mortgage loan originators;
- pay a registration fee in an amount capped at \$500;
- designate an officer of the person to be responsible for the activities of its sponsored residential mortgage loan originators;
- submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the applicable required fee;
- obtain preapproval from the commissioner that the person meets the eligibility requirements for registration as a financial services company; and
- not be in violation of statutory provisions regulating residential mortgage loan companies, a rule adopted under those provisions, or any order previously issued by the commissioner to the applicant.

The bill specifies that the annual renewal requirement for such a registration is met by meeting the preceding requirements and paying a renewal fee in an amount capped at \$500.

S.B. 1004 extends the commissioner's authority, under specified circumstances, to conduct inspections and investigate certain actions and records to the inspection and investigation of a person licensed under statutory provisions regulating residential mortgage loan companies or of a licensed residential mortgage loan originator who is sponsored by and conducting business for

a licensed or registered residential mortgage loan company. The bill authorizes the commissioner to require reimbursement of expenses for each examiner for on-site examination or investigation of a licensed residential mortgage loan company if records are located out of state or if the review is considered necessary beyond the routine examination process, and requires the finance commission by rule to set the maximum amount for the reimbursement of such expenses. The bill clarifies conditions under which the commissioner is authorized to order disciplinary action against a licensed or registered residential mortgage loan company on determination of the company's failure within a reasonable time to honor the commissioner's request for payment, including payment of any applicable fees, and authorizes the commissioner to rescind or vacate any previously issued disciplinary order at the commissioner's discretion.

S.B. 1004 clarifies that a person, unless otherwise exempt, who conducts activities regulated under provisions governing residential mortgage loan companies without first obtaining a residential mortgage loan company license, registration as a financial services company, or residential mortgage loan originator license, as applicable, commits a Class B misdemeanor offense and that a second or subsequent conviction for such an offense is a Class A misdemeanor.

S.B. 1004 prohibits an application for the recovery of actual damages from the recovery fund used to reimburse residential mortgage loan applicants for certain out-of-pocket losses incurred due to acts committed by a residential mortgage loan originator from being filed after the fourth anniversary, rather than the second anniversary, of the date of the alleged act or omission causing the actual damages or the date the act or omission should reasonably have been discovered.

### **Mortgage Bankers and Residential Mortgage Loan Originators**

S.B. 1004 includes among the requirements for registration as a mortgage banker the requirement that the mortgage banker not be in violation of statutory provisions regulating the registration of mortgage bankers, a rule adopted under those provisions, or any order previously issued by the savings and mortgage lending commissioner to the applicant. The bill requires a mortgage banker to update information contained in the registration not later than the 10th day, rather than the 30th day, after the date the information changes. The bill authorizes the commissioner, after review of the circumstances, to revoke the mortgage banker's registration if the mortgage banker has had a license, registration, or other certification revoked by a state or federal regulatory authority, and applies to such a mortgage banker certain statutory provisions entitling the mortgage banker to a hearing on the commissioner's proposal to revoke the mortgage banker's registration.

S.B. 1004 requires the mortgage industry advisory committee to advise and assist the commissioner with respect to statutory provisions regulating mortgage bankers and residential mortgage loan originators, and clarifies that the commissioner has the authority to remove a member of that committee if the member does not maintain the qualifications required to be a member of the committee, rather than if the member does not have such qualifications at the time of appointment to the committee. The bill clarifies that the committee is required to advise the commissioner on the proposal and adoption of rules relating to the mortgage industry in general, rather than restricting such advice to rules relating to licensing, education and experience requirements for licensing, and the conduct and ethics of residential mortgage loan originators. The bill includes in the topics on which the committee advises the commissioner the form of or format for documents under the bill's provisions relating to mortgage bankers and residential mortgage loan originators and the interpretation, implementation, and enforcement of those provisions.

S.B. 1004, in statutory provisions prohibiting an individual from acting or attempting to act in the capacity of a residential mortgage loan originator unless certain conditions are met, provides an exception for an individual who is exempt from residential mortgage loan originator requirements as prescribed by the bill, or an individual who is sponsored by an appropriate

company, which the bill defines as an entity that is licensed or registered under statutory provisions regulating mortgage bankers and residential mortgage loan originators or residential mortgage loan companies, and for which the individual is acting as a residential mortgage loan originator.

S.B. 1004 raises from \$375 to \$500 the cap on the application fee that the commissioner has the authority to determine for an application for a residential mortgage loan originator license. The bill additionally exempts from residential mortgage loan originator requirements any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured and exempts an individual who in that period originates five or fewer closed residential mortgage loans exclusively for a single federally chartered depository institution and closes the loans within that period; who is contractually prohibited from soliciting, processing, negotiating, or placing a residential mortgage loan with a person other than the depository institution; and who is sponsored by a life insurance company, or an affiliate of the company, authorized to engage in business in Texas.

S.B. 1004 applies statutory provisions prescribing criminal and other background checks for residential mortgage loan companies and residential mortgage loan originators to the bill's provisions regulating the registration of mortgage bankers and licensing of mortgage loan originators. The bill establishes that a person is considered to have been convicted of a criminal offense if a sentence is imposed on the person; the person received probation or community supervision, including deferred adjudication or community service; or the court deferred final disposition of the person's case.

S.B. 1004 authorizes the commissioner to issue a conditional residential mortgage loan originator license and requires the finance commission by rule to adopt reasonable terms and conditions for the conditional license. The bill clarifies that a residential mortgage loan originator license is valid through December 31 of the year of issuance and authorizes the license's renewal on or before its expiration date if the residential mortgage loan originator pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed \$500 and the recovery fund fee, continues to meet the minimum requirements for license issuance, and provides the commissioner with satisfactory evidence that the residential mortgage loan originator has attended required continuing education courses during the term of the current license.

S.B. 1004 requires an application for renewal to be in the form prescribed by the commissioner, and authorizes the commissioner to conduct a background check on receipt of a request for a renewal of a residential mortgage loan originator license. The bill establishes that a renewal fee is not refundable, prohibits such a fee from being credited or applied to any other fee or indebtedness owed by the person paying the fee, and authorizes the commissioner to collect a fee in an amount not to exceed \$50 for any returned check or credit card charge back relating to a renewal fee for a residential mortgage loan originator license. The bill clarifies that a person whose residential mortgage loan originator license has expired is prohibited from engaging in activities that require a license until the license has been reinstated or a new license has been issued, and clarifies that a person whose application for or request to renew a license has been denied is not eligible to be licensed for a period of two years after the date the denial becomes final, or a shorter period as determined by the commissioner after evaluating the specific circumstances of the denial. The bill authorizes the finance commission to adopt rules to provide conditions for which the commissioner may shorten the period of ineligibility.

S.B. 1004 requires the commissioner to administer and enforce its provisions relating to the licensing of residential mortgage loan originators and the disclosures and requirements related to such licensing.

S.B. 1004, in provisions prescribing the commissioner's authority with respect to ensuring that

the operations of mortgage bankers acting as residential mortgage loan servicers or residential mortgage loan servicers are compliant, clarifies that the commissioner or the commissioner's designee is authorized to participate in multi-state mortgage examinations as scheduled by either the Conference of State Bank Supervisors Multi-State Mortgage Committee or by the Consumer Financial Protection Bureau in accordance with the protocol for such examinations.

S.B. 1004 clarifies that a person who is not exempt under provisions regulating mortgage bankers and residential mortgage loan originators or other applicable law and who acts as a residential mortgage loan originator without first obtaining the required license commits a Class B misdemeanor offense and that a second or subsequent conviction for such an offense is a Class A misdemeanor. The bill establishes that all compensation received by a residential mortgage loan originator during a period of suspension is subject to forfeiture.

S.B. 1004 clarifies the commissioner's authority, in the commissioner's discretion, to rescind or vacate any previously issued revocation order on the license of a residential mortgage loan originator.

S.B. 1004 requires an applicant for a residential mortgage loan originator license to complete any additional requirements established by the applicable regulatory official and adopted by rule of the rulemaking authority, in addition to completing education courses that include at least the minimum number of hours and type of courses required by the S.A.F.E. Mortgage Licensing Act and the minimum number of hours of training related to lending standards for the nontraditional mortgage product marketplace required by that act.

### **Repealed Provisions**

S.B. 1004 repeals provisions relating to the credit union commissioner's duties with respect to the licensure of certain mortgage loan originators and to the regulation of credit union subsidiary organizations who act as residential mortgage loan originators and relating to establishing when a residential mortgage loan originator is considered to have completed the performance of the residential mortgage loan originator's services for a mortgage applicant.

S.B. 1004 repeals the following provisions of the Finance Code:

- Section 15.4024
- Section 156.2015
- Section 156.205
- Section 156.405
- Sections 156.101(a-1) and (a-2)
- Section 156.102(b)
- Sections 156.201(b), (b-1), and (b-2)
- Section 156.202(c)
- Section 156.203(c)
- Section 156.2041(b)
- Section 156.2042(b)
- Section 156.2043(b)
- Section 156.2044(c)
- Section 156.2045
- Section 156.206(a)

- Sections 156.207(b), (c), and (d)
- Section 156.2081(c)
- Sections 156.208(b-1), (b-2), and (j)
- Section 157.003(f), Finance Code, as added by Chapter 655 (S.B. 1124), Acts of the 82nd Legislature, Regular Session, 2011
- Section 157.012(d)
- Section 157.015(b)
- Section 180.251(b)

**EFFECTIVE DATE**

September 1, 2013.