

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on November 21, 2011.
Date prior to or same as filing date

Department of Consumer & Business Services, Division of Finance & Corporate Securities OAR 441
Agency and Division Administrative Rules Chapter Number

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to become effective upon filing Rulemaking Notice was published in the October 2011 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Establishes process and criteria for determining applicability of mortgage loan originator licensing to nonprofit organizations.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

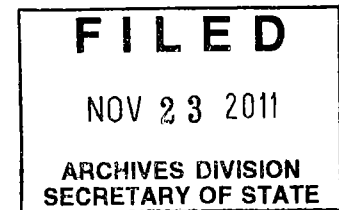
ADOPT: 441-880-0005, 441-880-0006, 441-880-0007, 441-880-0008

AMEND:

REPEAL:

RENUMBER:

AMEND & RENUMBER:



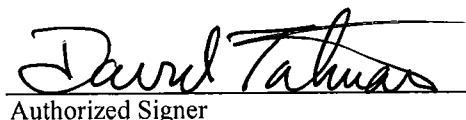
Stat. Auth.: ORS 86A.242, 86A.203

Other Auth.: 24 C.F.R. § 3400.103(e)(6)-(7)

Stats. Implemented: ORS 86A.203

RULE SUMMARY

In response to the recent housing crisis, the Congress enacted the S.A.F.E. Mortgage Licensing Act of 2008 (Pub. L. 110-289). The S.A.F.E. Act sets minimum standards for the states to adopt for the licensing of mortgage loan originators; i.e., individuals that take mortgage loan applications and negotiate mortgage loan terms. After passage of the federal law and implementation at the state level, various groups raised concerns that the S.A.F.E. Act could apply to nonprofit organizations and government entities engaged in loan origination activities. In response, the U.S. Department of Housing and Urban Development issued final regulations in July 2011 (*see* 76 Fed. Reg. 38464). HUD determined that the S.A.F.E. Act applies to businesses, not "bona fide" nonprofit organizations and government entities. HUD's interpretation required states to establish criteria for the nonprofit organization to be considered bona fide, for purposes of the S.A.F.E. Act, and to establish a basic process for making the determination. The adopted rules establish the process and criteria used to determine when a nonprofit organization is bona fide and clarifies that certain government employees need not obtain mortgage loan originator licenses.


Authorized Signer

David C. Tatman
Printed name

11/21/2011
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

FCs 11-2011

441-880-0005**Application of ORS 86A.200 to 86A.239 to Employees of Agencies of the United States, State Agencies, Local Governments and Housing Authorities**

As permitted by 24 C.F.R. § 3400.103(e)(6), the licensing provisions of ORS 86A.200 to 86A.239 do not apply to an employee of an agency of the United States, the executive department, a local government, a special government body, or a housing authority. The application of this rule is self-executing. For purposes of this rule:

- (1) "Executive department" has the same meaning as the term is defined in ORS 174.112.
- (2) "Local government" has the same meaning as the term is defined in ORS 174.116.
- (3) "Special government body" has the same meaning as the term is defined in ORS 174.117.
- (4) "Housing authority" has the same meaning as that term is used in ORS chapter 456.

Stat. Auth.: ORS 86A.242

Stat. Implemented: ORS 86A.203

Hist.: New.

441-880-0006**Application of ORS 86A.200 to 86A.239 to Employees of Bona Fide Nonprofit Organizations**

(1) As permitted by 24 C.F.R. § 3400.103(e)(7), the licensing provisions of ORS 86A.200 to 86A.239 do not apply to an employee of a bona fide nonprofit organization as that term is described by criteria established in OAR 441-880-0008, including a limited liability company of which the nonprofit corporation is the sole member, and subject to the following conditions:

(a) The employee may not originate residential mortgage loans outside the scope of the employee's duties and employment at the bona fide nonprofit organization without obtaining a mortgage loan originator license.

(b) The employee shall act as a mortgage loan originator only with respect to residential mortgage loans with terms that are in the best interest of the borrower, as that term is described by criteria established in OAR 441-880-0008.

(2) For purposes of OAR 441-880-0006 through 441-880-0008, "employee" has the same meaning as the criteria listed in OAR 441-850-0005, as applied to the nonprofit organization.

Stat. Auth.: ORS 86A.242

Stat. Implemented: ORS 86A.203

Hist.: New.

441-880-0007

Process for Determining if Nonprofit Organization is Bona Fide

As required by 24 C.F.R. § 3400.103(e)(7)(ii), the process for determining whether a nonprofit organization is a bona fide nonprofit organization is as follows:

(1) A nonprofit organization may request in writing that the director determine whether the nonprofit organization is a bona fide nonprofit organization with respect to the licensing of employees as mortgage loan originators under ORS 86A.200 to 86A.239. The nonprofit organization shall supply all information and documentation necessary for the director to make a determination that the nonprofit organization meets the criteria established in 441-880-0008 in a timely manner. If the nonprofit organization registers a member-managed limited liability company for the purpose of loan origination activities, the determination request and supporting documentation must be provided by and address the limited liability company. The request will be denied if the nonprofit organization fails to provide documents requested by the director within 30 days following the request.

(2) A nonprofit organization shall submit, at a minimum, all the following information:

(a) The determination letter or other indicia from the Internal Revenue Service recognizing the nonprofit organization as exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).

(b) The nonprofit organization's organizing documents, including articles of incorporation filed under ORS 65.047 and bylaws filed under ORS 65.061.

(c) The nonprofit organization's evidence of registration as a charitable organization with the Attorney General under ORS 128.650.

(d) The most recent report filed with the Attorney General under ORS 128.670 detailing the nature of the assets held by the nonprofit organization and the administration of those assets by the organization.

(e) The nonprofit organization's most recent Form 990, Return of Organization Exempt from Income Tax, filed by the nonprofit organization.

(f) If not included within the nonprofit organization's Form 990 tax return, a description of the compensation and incentive structure for employees subject to any determination under these rules.

(g) A description of each loan program provided by the nonprofit organization, including a description of eligibility, purpose, loan terms, key features and servicing or securitization plans, if any.

(h) A copy of the nonprofit organization's complaint process, as required by 441-880-0008.

(i) Other information as requested by the director.

(3)(a) An employee of a nonprofit organization that has requested that the director make a determination that the organization is a bona fide nonprofit organization, and where the statements in such

application are true and correct at the time made, is not subject to the licensing requirements of ORS 86A.200 to 86A.239 during the time that the director is making the determination.

(b) An employee of a nonprofit organization entity that has not requested that the director determine if the organization is a bona fide nonprofit organization is subject to the licensing requirements of ORS 86A.200 to 86A.239.

(4) A determination by the director on the application of ORS 86A.200 to 86A.239 to employees of bona fide nonprofit organizations, or during the period of time when the director is making a determination under (2)(a) of this rule, does not relieve the nonprofit organization from meeting any applicable requirements of laws other than ORS 86A.200 to 86A.239, including but not limited to federal and state laws related to lending, charitable activities or consumer protection.

(5)(a) A nonprofit organization determined by the director to be a bona fide nonprofit organization with respect to the licensing of employees as mortgage loan originators under ORS 86A.200 to 86A.239 shall submit to the director at least annually a certification that the nonprofit organization continues to meet the criteria under which the nonprofit organization requested a determination under this rule.

(b) The nonprofit organization shall attach with the certification the most recent financial audit performed by an independent third-party auditor including, but not limited to, audits performed on nonprofit organizations receiving federal funds according to OMB Circular A-133, published by the Office of Management and Budget and in effect as of the adoption of this rule.

(c) A nonprofit organization determined by the director to be a bona fide nonprofit organization with respect to the licensing of employees as mortgage loan originators under ORS 86A.200 to 86A.239 shall disclose to the director any significant changes to the materials submitted under this rule or to the nonprofit organization's operations affecting a determination under ORS 441-880-0008 as soon as is practicable.

(6)(a) In addition to the certifications required under this section, the director shall be authorized to periodically examine the books and activities of an organization determined to be a bona fide nonprofit organization by the director for compliance with OAR 441-880-0008.

(b) If the director determines that a nonprofit organization no longer satisfies the criteria established in OAR 441-880-0008, the director shall, subject to ORS chapter 183, rescind the director's determination that the organization's is a bona fide nonprofit organization with respect to the licensing of employees as mortgage loan originators under ORS 86A.200 to 86A.239.

(c) An examination under this section is an audit or examination for purposes of OAR 441-860-0110.

Stat. Auth.: ORS 86A.242

Stat. Implemented: ORS 86A.203

Hist.: New.

441-880-0008

Criteria for Determining if Nonprofit Organization is Bona Fide

As required by 24 C.F.R. § 3400.103(e)(7)(ii), a bona fide nonprofit organization is an organization that meets all of the following criteria:

(1) The nonprofit organization has been granted a tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).

(2) The nonprofit organization promotes affordable housing, provides homeownership education, or provides similar services.

(3) The nonprofit organization conducts its activities in a manner that serves public or charitable purposes.

(a) The director may consider the following activities conclusive when making a determination under this section: (A) Making loans for the purpose of providing assistance for downpayments, closing costs, or other home purchase subsidies;

(B) Making loans for the purpose of funding housing rehabilitation projects;

(C) Making loans for the purpose of providing energy efficiency assistance; or

(D) Making loans for the purpose of avoiding or preventing foreclosure.

(b) For purposes of this section, organizations that engage in the brokering of mortgage loans in a manner that would require a license under ORS 86A.100(5) will not be considered to have conclusively met the presumption in subsection (a).

(4) The nonprofit organization charges no more in fees than is necessary to support the organization's loan origination program activities. The director may consider recordation fees, application fees and housing counseling fees that together do not exceed one percent of the principal of loan as conclusive when making a determination under this section.

(5) The nonprofit organization compensates its employees in a manner that does not incentivize employees to act other than in the best interests of the borrower. For purposes of this section, compensation based on loan volume, loan terms, or other measures of performance will not be considered to have conclusively met the presumption that the nonprofit organization compensates employees in a manner that does not incentivize employees to act other than in the best interests of the borrower.

(6) The nonprofit organization provides for the borrower residential mortgage loans that are consistent with loan origination in a public or charitable context, that contain terms in the best interest of the borrower, and that are comparable to mortgage loans and housing assistance provided under government housing assistance programs. The director may consider any one of the following loan terms conclusive when making a determination that a loan is made in the best interest of the borrower:

(a) Loan terms that do not charge a recipient for the accrual of interest;

- (b) Loan terms that charge interest at below market rates;
- (c) Loan terms that require a borrower to qualify for the loan by the contribution of sweat equity;
- (d) Loan terms that forgive repayment in whole or in part, whether over a period of time, on a specified date, or subject to ownership or occupancy conditions; or
- (e) Loan terms that defer repayment for a minimum amount of time, until the residential dwelling is sold, or until the recipient no longer occupies the residential dwelling. This subsection does not apply to home equity conversion mortgages, commonly known as reverse mortgages.
- (f) A loan whose terms restrict the use of the property by the borrower to the borrower's principal residence shall not be deemed to be a term that is unfavorable to the borrower so long as the loan otherwise qualifies under subsections (a) through (e) of this rule.

(7) The nonprofit organization requires or provides to employees subject to 441-880-0006 training on state and federal fair lending laws and consumer protection laws that are relevant to the loan origination services that the nonprofit organization provides to its borrowers. The director may consider training in one or more of the following laws directly related to the nonprofit organization's loan origination activities conclusive when making a determination under this section:

- (a) The Equal Credit Opportunity Act, 15 U.S.C. § 1601 *et seq.* and Regulation B, 12 C.F.R. Part 202.
- (b) The Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* and Regulation Z, 12 C.F.R. Part 226.
- (c) The Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* and Regulation V, 12 C.F.R. Part 216.
- (d) The Home Ownership and Equity Protection Act, 15 U.S.C. § 1639 *et seq.*
- (e) The Home Mortgage Disclosure Act, 12 U.S.C. § 2801 *et seq.* and Regulation C, 12 C.F.R. Part 203.
- (f) The Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.* and regulations implementing the Act, 24 C.F.R. Part 3500.
- (g) The Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*
- (h) Portions of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809 and §§ 6821-6827, and regulations implementing the Act, 16 CFR Part 314, that relate to the privacy of consumers' personal financial information.
- (i) The S.A.F.E. Mortgage Licensing Act of 2008, 12 U.S.C. § 5101 *et seq.*, and regulations implementing the Act, 12 C.F.R. Part 3400.

(8) The nonprofit organization requires a state criminal records check of each individual employed by the nonprofit organization to engage, in whole or in part, in loan origination activities.

(9) The nonprofit organization requires or provides continuing education on state and federal fair lending laws and consumer protection laws referenced under section (8) of this rule that are relevant to the loan origination services that the nonprofit organization provides to its borrowers.

(10) The nonprofit organization implements and administers a complaint process that, at a minimum, provides a process for receiving complaints from borrowers and creates a record of the resolution of the complaint, if any.

Stat. Auth.: ORS 86A.242

Stat. Implemented: ORS 86A.203

Hist.: New.
