

**DEPARTMENT OF FINANCIAL INSTITUTIONS
ORDER OF THE COMMISSIONER**

WHEREAS, Congress passed and the President signed into law the Housing and Economic Recovery Act of 2008, and Title V of that Act contained the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 15 U.S.C. §§5101, *et seq.* (the "S.A.F.E. Act");

WHEREAS, the S.A.F.E. Act directed states to enact legislation to meet certain minimum requirements relating to the registration and supervision of mortgage loan originators and processors;

WHEREAS, for the purposes of complying with the requirements of the S.A.F.E. Act, the Kentucky General Assembly passed and the Governor signed into law amendments to the Mortgage Licensing and Regulation Act, KRS Chapter 286.8 (the "Act");

WHEREAS, KRS 286.8-285(1)(b) authorizes the Commissioner to waive or modify, in whole or in part, by rule or by order, any or all of the requirements of the Act and to establish new requirements as reasonably necessary to implement and comply with the minimum requirements of the S.A.F.E. Act;

WHEREAS, KRS 286.8-290(1) was amended effective June 8, 2011 to create an exemption from registration for mortgage loan originators who are exempted by an order of the commissioner, provided that the exemption is not contrary to the requirements of the S.A.F.E. Act and amendments thereto;

WHEREAS, on June 30, 2011, the Department of Housing and Urban Development ("HUD") published its Final Rule setting standards for state compliance with the S.A.F.E. Act, and identifying certain activities that it does not consider to constitute the business of mortgage loan origination;

WHEREAS, the Commissioner has determined it reasonably necessary to modify certain provisions of the Act in order to adopt certain aspects of the HUD Final Rule relating to activities constituting the business of mortgage loan origination;

NOW, THEREFORE, the Commissioner, pursuant to KRS 286.8-285(1)(b) and 286.8-290(1)(e), hereby **ORDERS** as follows:

In addition to the individuals currently exempted by KRS 286.8-290, KRS 286.8-290(1) is modified to exempt the following mortgage loan originators from the registration and regulatory requirements of KRS 286.8-255:

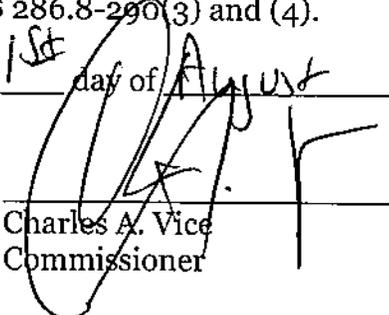
- (a) a natural person who originates a mortgage loan secured by a dwelling that, at the time the loan is originated, serves as the natural person's primary residence or vacation property, or that constitutes property conveyed to the natural person by means of inheritance, unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator, and absent other evidence indicating that the natural person is engaged in the business of a mortgage loan originator;
- (b) An individual who engages in only the following activities in the mortgage loan process:
 - (1) Sharing only general information about a financing source;
 - (2) Discussing hypothetical financing options, i.e., options not related to a specific financing source;
 - (3) Giving the homebuyer a list of available financing sources without recommending any of the sources;
 - (4) Discussing a buyer's ability to afford a home; and
 - (5) Presenting or discussing generic facts or generic rate sheets;
- (c) An individual who is employed by a government agency or housing finance agency, provided that the mortgage loan originator's conduct arises solely within the course and scope of such employment. For the purposes of this exemption, "housing finance agency" means any authority that is chartered by a state to help meet the affordable housing needs of the state, is supervised directly or indirectly by the state government, is subject to audit and review by the state in which it operates, and whose activities make it eligible to be a member of the National Council of State Housing Agencies; and
- (d) An individual who is employed by a bona fide nonprofit organization, provided that the mortgage loan originator's conduct arises solely within the course and scope of such employment and is for

public or charitable purposes rather than for profit. For the purposes of this exemption, an organization shall be considered to be a "bona fide" nonprofit organization if it demonstrates to the Commissioner that it:

- (1) Maintains tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986;
- (2) Promotes affordable housing or provides homeownership education, or similar services;
- (3) Conducts its activities in a manner that serves public or charitable purposes;
- (4) Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interest of its clients;
- (5) Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients; and
- (6) Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

All mortgage loan originators exempted by this Order shall nevertheless be subject to KRS 286.8-290(3) and (4).

It is so **ORDERED** as of the 1st day of August, 2011.



Charles A. Vice
Commissioner