

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION  
Rules I through IV pertaining to )  
financial responsibility of mortgage loan )  
originators and control persons and )  
ultimate equity owners of mortgage )  
entities )

TO: All Concerned Persons

1. On October 13, 2011, the Department of Administration published MAR Notice No. 2-59-458 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 2108 of the 2011 Montana Administrative Register, Issue No. 19.

2. On November 3, 2011, a public hearing was held in Helena concerning the proposed adoption. There were no comments received at the hearing. One person submitted a written comment to the proposed new rules during the comment period.

3. The department has thoroughly considered the comment received. A summary of the comment received and the department's response follow:

COMMENT # 1: Judy L. Sprandel of American Pacific Mortgage dba A Preferred Mortgage Team commented that it is unfair that loan officers in brokerage firms must meet financial responsibility standards when bank loan officers do not. She suggests that the rule be redrafted to include banks in its scope.

RESPONSE #1: Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), 12 USC 5101, et seq., in 2008. It required all states to enact legislation within two years to comply with the SAFE Act. It gave the federal U.S. Department of Housing and Urban Development (HUD) the authority to adopt rules to implement the SAFE Act and to determine whether each state's laws complies with the SAFE Act. Under the SAFE Act, nonfinancial institution mortgage loan originators must be licensed by the states and meet the following requirements: precensure education; testing; financial responsibility; and character and fitness standards.

On the other hand, states do not license mortgage loan originators employed by financial institutions. They are registered by their primary federal regulator. The standards for registration are character and fitness standards. The requirements for loan originators working for banks and credit unions are different from those pertaining to nonfinancial institution loan originators. The differing requirements for financial institutions and nonfinancial institutions are required by the SAFE Act. The state has no authority over mortgage loan originators employed by financial institutions and no ability to change federal law.

COMMENT #2: Ms. Sprandel also commented that it is unfair to penalize a loan officer who is delinquent in repaying a student loan due to a slow period. In fact, personal finances should not necessarily determine whether a loan officer is financially responsible, competent, ethical, or trustworthy.

RESPONSE #2: The proposed rules do not penalize a loan officer who is delinquent in repaying a student loan due to a slow period. As long as the loan originator has entered into a repayment plan with the lender and is making payments under that plan, that individual would be licensed or continue to be licensed.

The statutes require the department to determine financial responsibility as a precondition to license issuance. HUD has required that states develop reasonable standards to determine whether an applicant has demonstrated financial responsibility. The proposed rules are designed to set forth reasonable standards to guide that determination.

4. The department has adopted New Rules I (ARM 2.59.1739), II (2.59.1740), III (2.59.1741), and IV (2.59.1742) exactly as proposed.

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State January 17, 2012.