

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing accompanies this form.

**FILED**  
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ARCHIVES DIVISION  
SECRETARY OF STATE

Department of Consumer and Business Services, Finance and Securities Regulation  
Agency and Division

441  
Administrative Rules Chapter Number

Commercial Construction Lending Exemption to Mortgage Loan Originator Licensing Requirements.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

adopting OAR 441-880-0010 relating to the regulation of mortgage loan originators.

**Statutory Authority:**

ORS 86A.242

**Other Authority:**

**Statutes Implemented:**

ORS 86A.203

**Need for the Rule(s):**

Although the mortgage broker and mortgage banker state licensing laws allow private money lenders to make commercial loans without obtaining a license, the mortgage loan originator (MLO) licensing law is not worded in such a way to explicitly provide a similar exemption.

Licensing and other regulatory requirements for MLOs are in place to protect the financial interest of consumers. Licensed contractors who take out private money loans for business purposes tend to be in a better position to fully understand the risks associated with such transactions and do not require the same level of protection as consumers. In order to reduce compliance costs for lenders who primarily deal in these types of commercial loans, the proposed rules would provide a narrow exemption to the MLO licensing requirement.

ORS 86A.203 was enacted to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act). 12 U.S.C. § 5101 et seq. The S.A.F.E. Act requires states to license "loan originators" who are individuals that take a residential mortgage loan application and offer or negotiate terms of a "residential mortgage loan" for compensation or gain. The S.A.F.E. Act defines "residential mortgage loan" as "any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling... or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined)."

ORS 86A.203 allows the Director of the Department of Consumer and Business Services (DCBS) to grant exemptions to the MLO licensing requirements by rule as long as the exemptions are permitted by the United States Consumer Financial Protection Bureau (CFPB) under the S.A.F.E. Act. Because the S.A.F.E. Act and its implementing regulations only require states to license MLOs who deal in residential mortgage loans made to consumers but do not require similar licenses for entities that deal in business purpose loans, the director of DCBS may exempt commercial construction loans.

**Documents Relied Upon, and where they are available:**

ORS 86A.200 to 86A.239 is available at <http://www.oregonlegislature.gov>; 12 U.S.C. § 5101 et seq. is available at <http://uscode.house.gov>; and 12 C.F.R. § 1026 is available at <http://www.ecfr.gov>.

**Fiscal and Economic Impact:**

No fiscal impact is anticipated for the Division of Financial Regulation (DFR). To the extent that private money lenders choose to make commercial construction loans under this exemption, those entities would no longer need to apply for a MLO license and would experience reduced compliance costs. Lower compliance costs could increase the availability and reduce the cost of credit for general contractors seeking funding for residential construction projects.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

Based on available information, these proposed rules would have no financial impact on state agencies or local governments, because they create no new mandates for state or local government entities. Although DFR cannot quantify with available data, the public could see a slight economic benefit to the extent that reduced regulatory burden for the narrow class of private money lenders exempted from MLO

licensing results in a lower cost of credit for contractors.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

The rules would allow lenders to make commercial construction loans without obtaining a mortgage loan originator license. It is unknown how many unlicensed lenders would take advantage of the new exemption and make commercial construction loans. It is unknown how many licensed contractors in Oregon would qualify as a small business or would be involved in these types of transactions. Small businesses that wish to make these types of loans likely would have lower compliance costs than obtaining and maintaining a MLO license.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

Small businesses making loans under this exemption would be required to keep records that it has met the conditions of the exemption. While it is a record keeping requirement, these records would be less burdensome to keep than those required if the lender were to obtain a MLO license.

**c. Equipment, supplies, labor and increased administration required for compliance:**

None for small business. Compliance costs could be less expensive for those lending under this exemption than obtaining a mortgage loan originator license.

**How were small businesses involved in the development of this rule?**

Members of the advisory committee consisted of trade associations representing small businesses.

**Administrative Rule Advisory Committee consulted?: Yes**

**If not, why?:**

08-29-2016 5:00 p.m.	Shelley Greiner	shelley.a.greiner@oregon.gov
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address