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Deryl K. Schuster, Bank Commissioner

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TO: Chairman Pete DeGraaf, House Financial Institutions Committee  
FROM: Jennifer Cook, Deputy Commissioner, Division of Consumer and Mortgage Lending  
DATE: February 12, 2015  
RE: Testimony Regarding HB 2258

Good afternoon Mr. Chairman and members of the Committee. I am pleased to offer testimony in support of HB 2258.

HB 2258 amends the Kansas Mortgage Business Act, or KMBA, by changing the definition of “mortgage loan” to exclude companies that place liens of contractors from the licensing requirements of the KBMA. The bill also corrects an incorrect reference to the federal Truth and Lending Act and makes other technical corrections.

Companies that may place a lien of contractors are currently regulated under the Kansas Uniform Consumer Credit Code and are required to file notification with our agency. The intent of this bill is to prevent an unnecessary (and unintended licensing) requirement on these companies that are not otherwise engaged in mortgage business.

As background, a lien of contractors, aka “contractor’s liens”, is defined in K.S.A. Chapter 60, as a lien upon property for the labor, equipment, material or supplies furnished at the site of the property. Companies that may place a lien of contractors include those that sell siding, roofing, or water softening systems.

The KBMA currently defines mortgage business to include activities such making a mortgage loan, and mortgage loans are defined as “a loan or agreement to extend credit made to a natural person which is secured by a first or second mortgage, deed of trust, contract for deed or other similar instrument or document representing a security interest or lien upon any lot intended for residential purposes.”

Companies that conduct mortgage business in Kansas are required to be licensed with the Office of the State Bank Commissioner (OSBC). Licensing requirements are set out in the KMBA and are aligned with federal requirements passed by Congress in 2008 as part of the SAFE Act. The SAFE Act requires state licensing of mortgage companies and loan originators through the National Mortgage Licensing System (NMLS).

As a result, mortgage companies that conduct business with Kansas consumers must be licensed with the OSBC through the NMLS, pay a \$400 application fee and an annual \$300 renewal fee. In addition, each mortgage company must employ at least one loan originator. Loan originators are also required to be licensed with the OSBC through the NMLS. They pay a \$100 application fee and a \$50 annual renewal fee. In addition, they are required to undergo a criminal background check and credit check, and complete specific education requirements.

HB 2258 clarifies that companies that place a “lien of contractors” on a property, as set out in K.S.A. 60-1101 through K.S.A. 60-1110, are exempt from the definition of a mortgage loan. In doing so, it exempts them from mortgage company and loan originator licensing requirements. This bill only applies the exemption to liens of contractors. The goal is to prevent a company that may place a contractor’s lien on a property, but does not otherwise engaged in mortgage activity, from duplicative and unintended licensing requirements.

Thank you for your consideration.