



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

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April 25, 2023

Senator Anne Carney, Senate Chair
Representative Matt Moonen, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333-0100
Re: L.D. 848, An Act to Expunge Certain Nonviolent Drug Crimes

Dear Senator Carney, Representative Moonen, and Members of the Committee:

The Bureau of Consumer Credit Protection submits this letter as testimony neither for nor against LD 848 to provide information for the Committee on the issue presented.

This bill, in expunging some records of class C and higher crimes conflicts with federal law which preempts state legislation. The S.A.F.E. Mortgage Licensing Act of 2008 which governs licensing of mortgage loan originators nationwide sets minimum standards for states to issue such licenses. Those standards, set out in 12 C.F.R. § 1008.105(b) state a license as a mortgage loan originator can only be issued to a person who:

“(b)

(1) Has never been convicted of, or pled guilty or *nolo contendere* to, a felony in a domestic, foreign, or military court:

(i) During the 7-year period preceding the date of the application for licensing; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

(2) For purposes of this paragraph b:

(i) Expunged convictions and pardoned convictions do not, in themselves, affect the eligibility of the individual; and

(ii) Whether a particular crime is classified as a felony is determined by the law of the jurisdiction in which an individual is convicted.”

While (b)(2)(i) does provide that expunged convictions do not, in themselves, affect the eligibility, the term “in themselves” suggests that the convictions should be disclosed to allow



consideration with other factors to determine fitness.

The penalty for failing to adhere to the S.A.F.E. standards is that the Consumer Financial Protection Bureau (CFPB) can step in and set its own licensing regime in place of the deficient state policy. 12 C.F.R. §1008.101 provides:

“This subpart describes the minimum standards of the S.A.F.E. Act that apply to a state's licensing and registering of loan originators. This subpart also provides the procedures that the Bureau follows to determine that a state does not have in place a system for licensing and registering mortgage loan originators that complies with the minimum standards. Upon making such a determination, the Bureau will impose the requirements and exercise the enforcement authorities described in subparts C and E of this part.”

To avoid any potential conflict with the S.A.F.E. Act, BCCP recommends that if the Committee determines the bill should be voted ought to pass, the bill should be amended to allow expungement of offenses class C or above only after a period of 7 years from conviction or a plea of guilty or nolo contendere for mortgage loan originators subject to the S.A.F.E. Act.



Linda Conti
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