

NRMLA Annual Meeting 2011

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SAFE Act Update

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Overview

- U.S. Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) enacted on July 30, 2008.
- SAFE Act established the minimum standards for state licensing of residential mortgage loan originators in order to increase uniformity, improve accountability of loan originators, combat fraud and enhance consumer protections.
- SAFE Act directed the CSBS and AARMR to establish a Nationwide Mortgage Licensing System and Registry (NMLS).
- All states required to participate in the NMLSR and to develop a licensing system for mortgage loan originators that met the minimum standards contained in SAFE Act as determined by HUD by August 1, 2009, or August 1, 2010, in the case of legislatures that met biannually.
- SAFE Act also requires the OCC, FRB, FDIC, OTS, FCA, and NCUA to develop and implement and maintain a Federal registration system for employees regulated by a Federal banking agency.

Overview

- The SAFE Act requires that:
 - All residential mortgage loan originators be either state-licensed or federally registered.
 - A mortgage loan originator employed by a federally insured depository institution (state or federally chartered), or any owned or controlled subsidiary of a federally insured depository institution, must be federally registered under standards developed by the federal banking agencies.
 - All other individual mortgage loan originators must be state licensed.
 - If a state does not pass a conforming law, a state-licensed entity's loan originators can be licensed through a HUD-backup system.
 - All state licensed or federally registered mortgage loan originators will be registered with the NMLS maintained by CSBS and AARMR.

Overview

- “Loan originator” is defined as an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan or compensation or gain.
- Applicants for a state mortgage loan originator license must:
 - Provide to the NMLS:
 - A summary of personal history and work experience.
 - Fingerprints for submission to the Federal Bureau of Investigation for a state and national criminal history background check.
 - Authorization for the NMLS to obtain an independent credit report from a consumer-reporting agency.
 - Authorization for the NMLS to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction.

Overview

- Take 20 hours of pre-license education courses and eight hours annually for license renewals. All must be approved by NMLS and include:
 - Three hours of ethics pertaining to fraud, consumer protection, and fair lending.
 - Three hours of federal law and regulation
 - Two hours of standards on non-traditional mortgage lending
- Score at least 75 percent on a written test covering the above-mentioned subject areas including state law and regulation.
- A license can be denied, suspended or revoked if the licensee or applicant:
 - Has been convicted of a felony within the previous seven years or any crime of breach of trust or dishonesty, fraud or money laundering at any time.
 - Has had a loan originator license, consumer lender license, mortgage broker license or mortgage banker license revoked or denied at any time.

Overview

- Does not have the financial responsibility, experience or competence to adequately serve the public or to warrant the belief that the applicant or licensee will act lawfully, honestly and fairly.
- Standards for state license renewal include the following:
 - The loan originator continues to meet the minimum standards for license issue.
 - The loan originator has satisfied the annual continuing education requirements.
- CSBS and AARMR developed model legislation to aid states' compliance with the requirement of the SAFE Act.
- SAFE Act requires HUD to determine whether state law meets SAFE Act's minimum requirements for loan originator licensing.
- HUD approved the Model Act as meeting or exceeding the minimum requirements of the SAFE Act, but presented issues that required further consideration.

HUD Final Rule

- On June 30, 2011, HUD issued its final rule that sets forth the minimum standards for the state licensing of residential mortgage loan originators.
- New Rule effective August 29, 2011.
- HUD's authority over SAFE Rule transferred to the Consumer Financial Protection Bureau ("CFPB") on July 21, 2011.

HUD Final Rule

- Final Rule also clarifies and interprets certain statutory provisions that pertain to the scope of the SAFE Act's licensing requirements, and other requirements that pertain to the implementation, oversight and enforcement responsibilities of the states.
- States must meet the minimum requirements of the Final Rule in licensing loan originators, including standards regarding who is required to be licensed.
- SAFE Act and HUD Final Rule set minimum requirements - - states can expand beyond these standards.

HUD Final Rule

- Definitions
 - HUD included or expanded upon key definitions:
 - Activities of individual determine SAFE Act coverage, not title.
 - Individuals required to be licensed are those “engaged in the business of a loan originator.”
 - commercial context
 - habitually or repeatedly
 - distinction between those meeting the definition of a loan originator and those in the business of a loan originator

HUD Final Rule

- Loan Originator
 - Take an application and offer or negotiate terms of a loan for compensation or gain; OR
 - Represent to the public, through advertising or other means (business cards, marketing materials, signs, rate sheets, etc.), that can or will take an application or offer or negotiate terms.
- Significantly expands definition.
 - SAFE Act – take an application AND offer or negotiate.
 - Banking Agencies Final Rule – take an application AND offer or negotiate.
 - CSBS/AARMR Model Act – take an application OR offer or negotiate terms

HUD Final Rule

- Application – new definition, not included in SAFE Act or Model Act
 - Application is defined as a request, in any form, for an offer (or a response to a solicitation of any offer) of residential mortgage loan terms and the information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer.
- Offer or Negotiate – new definition, not included in SAFE Act or Model Act
 - Offer or negotiate includes presenting loan terms for consideration by a borrower, communicating with a borrower for the purpose of reaching a mutual understanding about loan terms, and recommending, referring, or steering a borrower or prospective borrower to a particular lender or set of loan terms in accordance with a duty to or incentive from any person other than the borrower.
- Employee is defined as an individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person AND whose compensation is reported on a W-2 issued by the controlling person.

HUD Final Rule

- Exemptions from Licensure include
 - “Loan processors and underwriters” are exempt as long as they do not represent to the public that can or will perform loan originator activities.
 - Loan processor or underwriter includes those that perform clerical or support duties at the direction of and subject to the supervision and instruction of licensed or registered mortgage loan originator.
 - See the Appendix to HUD Final Rule
 - Independent contractor loan processors and underwriters are not exempt because by definition, they do not perform duties at the direction of, and subject to, the supervision of a licensed/registered MLO.
 - Independent contractor loan processors and underwriters must be licensed.

HUD Final Rule

- Other exemptions include:
 - Real estate brokers, unless compensated by lender, broker or loan originator.
 - Processors and underwriters who work at the direction of and under supervision of a licensed/registered loan originator.
 - Employees of government agency or housing finance agency.
 - Employees of bon fide non-profit organization.
 - W-2 “employees” of “depository institutions.”

HUD Final Rule

- Exemptions include employees of government agencies or housing finance agencies who act as loan originators in accordance with their duties as employees of such agencies.
 - “Housing finance agency” is defined as an authority that is chartered by a state to help meet the affordable housing needs of the residents 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.

HUD Final Rule

- Also exempt are employees of a bona fide nonprofit organization who act as loan originators with respect to residential mortgage loan outside of a commercial context.
 - Requirements for “bona fide nonprofit organization” include:
 - 501(c)(3) tax exempt status
 - promotes affordable housing or provides homeownership education or similar services
 - conduct’s its activities in a manner that serves public or charitable purposes, rather than commercial purposes
 - receives funding and revenue and charges fees in a manner that does not incentivize employees to act other than in the best interests of the its clients
 - provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs

HUD Final Rule

- Additional exemptions include:
 - Individuals who offer and negotiate terms of a residential mortgage loan with or on behalf of a family member
 - An individual who only offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence
 - A licensed attorney who only negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of a client
- HUD deferred to the CFPB the determination of whether individuals involved in material mortgage modifications or 3rd party loan modification specialists should be covered.

Registration of Depository Institutions

- Final Rule for Depository Institutions published July 28, 2010 by OCC, FRB, FDIC, OTS, FCA and NCUA
- Effective Date was October 1, 2010

Registration of Depository Institutions

- The final rule identifies the federally regulated lending institutions covered by the rule (“Agency Regulated Institutions”)
 - OCC: national banks, Federal branches and agencies of foreign banks, and their operating subsidiaries
 - Federal Reserve: member banks (excluding national banks), their subsidiaries (not regulated under BHCA), branches and agencies of foreign banks (other than Federal branches, Federal agencies and insured State branches of foreign banks), and commercial lending companies owned/controlled by foreign banks
 - FDIC: insured state non-member banks (including state-licensed insured branches of foreign banks) and their subsidiaries (excluding brokers, dealers, investment companies, investment advisors and person providing insurance)
 - OTS: savings associations and their operating subsidiaries (NOTE, under Dodd Frank, OTS regulated entities moved under OCC umbrella)
 - FCA: all Farm Credit System institutions that actually originate residential mortgage loans
 - NCUA: federally insured credit unions

Registration of Depository Institutions

- “Mortgage Loan Originator” defined as an individual who:
 - Takes a residential mortgage loan application **AND**
 - Offers or negotiates terms of a residential mortgage loan for compensation or gain
- Tension with state law definitions, which commonly use “or”– state laws broader, more inclusive
- Requires that “mortgage loan originators” that are “employees” of Agency Regulated Institutions be registered via the NMLS and maintain a Unique Identifier

Registration of Depository Institutions

- MLO definition excludes:
 - An individual who performs purely administrative or clerical tasks on behalf of an MLO
 - An individual performing real estate brokerage activities
 - An individual extending credit under timeshare plans
 - Limited de minimis exemption for employees who have never been registered and act as MLO on 5 or fewer loans in a 12-month period
- “The substance of a transaction, not the label attached to it, is determinative of whether the Agency-regulated institution employee associated with it is a mortgage loan originator.”
 - Note the definition of MLO is function driven, not job title driven
 - Consider that MLO’s may be housed in multiple business units, since rule is broad (e.g. home equity lending, purchase money mortgages, reverse mortgages)

Registration of Depository Institutions

- “Taking a loan application”– companies should carefully evaluate their existing work flows and processes to determine which employees meet this prong of the test
 - Includes receiving consumer’s information indirectly in order to make an offer or negotiate a loan.
 - For example, an employee may receive the information indirectly (through another employee, a mortgage broker or an automated system)
 - Includes inputting information into an online application or other automated system on behalf of the consumer
 - But not if such inputting is merely “clerical”

Registration of Depository Institutions

- “Offering or negotiating terms of a loan”
 - Includes presenting a loan offer (verbally or in writing)
 - Even if the MLO does not have authority to negotiate the rate or other terms of the loan
 - Consider who signs written correspondence on behalf of your institution and whether that person may meet this requirement
 - Responding to a consumer’s request for a lower rate/points

Registration of Depository Institutions

- Final rule does not define “employee”
 - But during the House debate on this rule, Barney Frank stated:
 - “Nothing in this title changes existing federal law with respect to the authority of the Office of Thrift Supervision and the Office of the Comptroller of the Currency’s preemptive authority, and their right to regulate and oversee a depository institution’s products and services marketing and distribution system, and they do obviously have definitional authority under this legislation.” (House debate on HR 3221; 7/23/08).
 - A “dual employee” could be subject to both federal registration and state licensing
 - “Employees” acting within the scope of their employment with the Agency-regulated institutions are not subject to State licensing or registration requirements for mortgage loan originators, according to the Rule

Registration of Depository Institutions

- SAFE Act puts burden on regulated entity to determine who meets definition of MLO
- Depositories should be well along the time line for these determinations
 - Consider re-working job duties and processes
 - Work with team leads to ensure all affected individuals are prepared to be registered
- The Act mandates detailed written policies and procedures
 - Must be in place BEFORE registering any MLO's
 - Must be appropriate to size/complexity/scope of lending activities
 - Expect that policies/procedures will be reviewed by primary regulator in next audit/examination

Registration of Depository Institutions

- Written policies must include:
 - Policies documenting Bank's process for identifying MLO's that must be registered.
 - Checklists
 - Online forms
 - Policies informing employees of the registration requirement and how to comply
 - Policies regarding dissemination of Unique ID
 - Procedures regarding adequacy and accuracy of registrations

Registration of Depository Institutions

- Procedures regarding monitoring/tracking of registration/renewals
- Mandates independent annual testing
- Policies regarding necessary actions for any employees who fail to comply with registration requirements (including disciplinary actions)
- Procedures for reviewing criminal background reports
- Procedures regarding any agreements with third parties related to mortgage loan origination
 - Consider whether your institution outsources certain origination-related functions and what impact SAFE may have on those relationships
 - Consider whether your institution uses an employment agency to fill origination-related roles and what impact these new requirements may have

NMLS

The Nationwide Mortgage Licensing System and Registry (NMLS)

Fully-functional system for state licensure and registration:

- Apply for, maintain, renew, and surrender licenses
- Electronic collection and disbursement of fees
- Regulator license processing work-flow
- Streamlined annual renewals (all states at once)
- Submission of Financial statements
- Processing of fingerprints and Criminal Background Checks
- Processing of credit reports
- National and state Tests – development and administration
- National Education Approval
- *NMLS Consumer Access* (www.NMLSConsumerAccess.org)

NMLS

- All licensed/registered mortgage loan originators must participate in the NMLS
- Stated policy of Act to make Unique ID available to consumer before committing to the loan transaction (presumably so consumer can pull history on NMLS Consumer Access)
 - Must provide upon request (and)
 - Must provide before acting as MLO (and)
 - Must provide through original written communication
- Unique Identifier will allow regulatory agencies to trace the activities of mortgage loan originators – can target examinations

NMLS

- Federal Registry is part of the Nationwide Mortgage Licensing System & Registry (NMLS)
- Modified at the direction of the Federal banking agencies and the Farm Credit Administration to implement the SAFE Act's Federal Registration requirements:
 - Federally-regulated/insured institutions (and subsidiaries) will have an account on NMLS
 - Each MLO to be federally-registered will have an account on NMLS

Mortgage Loan Originators

1. Entitlement
 - Company or MLO can create individual record
 - Batch upload of some data
2. Complete and Submit MU4R Form
 - Company manages process but MLO must personally attest
3. Submit fingerprints for a national criminal background check
 - Returned to institution for review
4. Institution confirms employment

NMLS

- NMLS Criminal Background Check - NMLS is the channeler of criminal background check and has developed a national network of electronic fingerprint sites
- The NMLS Criminal Background Check manages the entire process from MLO authorization to fingerprint capture to return of the Criminal History Records Information to bank through NMLS
- * NMLS manages the entire fingerprint and criminal background check process - there is nothing a bank must do outside of NMLS.

NMLS

Under the SAFE Act:

- No mandatory NMLS testing for registration
- No mandatory NMLS education requirements for registration
- No NMLS credit check

- Must have national criminal background check
- Must have personal account on NMLS
- Must renew annually

NMLS

- Federal Registration Process
- Step 1: Determine if your Institution is Required to be Registered with NMLS
 - Is federally chartered or insured by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, Farm Credit Administration, and National Credit Union Administration (“the agencies”) AND employs individuals required to be federally registered as mortgage loan originators, your institution must register with NMLS.
 - Definition of covered institutions and mortgage loan originators are contained in the [final rules](#) published by the Agencies on July 28, 2010.
 - Exceeds de minimus exemption
 - Review and collect the information on Form MU1R that your institution will have to submit to be registered

NMLS

- Step 2: Determine your NMLS Account Administrators and other users
 - Each institution required to register MLOs must identify two individuals as NMLS Account Administrators. These Account Administrators will have primary responsibility for your institution's account on NMLS, are authorized to speak to the NMLS Call Center on behalf of your institution, and can set up additional sub users for your institution's account.
 - Each institution must have at least two Account Administrators
 - Each Account Administrator can perform all functions on NMLS on behalf of the institution, including setting up additional institution users
 - Account Administrators are the only ones who can contact the NMLS Call Center on behalf of the institution

NMLS

- Step 3: Determine how your institution will register MLOs
 - Determine who is required to be registered as an MLO.
 - How will your Institution register MLOs?
- Step 4: Obtain Two-Factor Authentications for all institution users
 - All Account Administrators and other users associated with your institution's NMLS Account must utilize a second authentication factor beyond the User Name and password provided by NMLS before they are able to log into their NMLS account on behalf of your institution.
 - Subscribe to your second factor authentication. You must obtain your second factor authentication directly from VeriSign. <http://www.verisign.com/>

NMLS

- Step 5: Gather the necessary data from your MLOs to create their accounts
 - Your institution will create the accounts for employees that you plan to register as MLOs. NMLS' automated process will allow your institution to batch upload your MLO information in bulk to create their accounts on the system. This batch upload process requires basic identifying and contact information on each MLO.

Collect the necessary information on your MLOs and fill out the batch upload file.

CONTACT INFORMATION

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