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SAFE Legislation, Mortgage Loan Originator Licensure, State and Federal Credit Union Service Organizations

Questions, Answers, and Administrative Interpretations

1. What is SAFE Legislation?

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, known as the SAFE Act, is federal legislation that was enacted as a partial response to the mortgage crisis that arguably resulted, in part, from a lack of appropriate monitoring, oversight, and regulation of the intermediaries between consumers and lenders in the residential mortgage industry; i.e., mortgage loan originators (MLOs).

The federal SAFE Act requires each state to enact SAFE legislation or defer to the U. S. Department of Housing and Urban Development (HUD) for such regulation. State SAFE legislation must be compliant with the federal SAFE Act, and HUD is charged with the responsibility to monitor compliance. HUD has published proposed SAFE rules and is awaiting comments. The Federal Financial Institutions Examination Council (FFIEC) will be issuing regulations for registration of employees of depository institutions under the SAFE Act. These regulations will also encompass employees of subsidiaries of depository institutions if the subsidiary is regulated by a federal financial institution regulatory agency. Since the National Credit Union Administration (NCUA) has stated that they do not regulate credit union service organizations (CUSOs), the FFIEC registration regulation will not apply to employees of CUSOs. Instead, CUSO employees who perform duties that meet the definition of a MLO will require a state-issued license.

The SAFE-compliant administrative rule (750 IAC 9) promulgated by the Indiana Department of Financial Institutions (DFI) requires MLO licensure by July 1, 2010. The SAFE rule is posted at: <http://www.in.gov/legislative/iac/T07500/A00090.PDF>.

2. What does the SAFE Act attempt to achieve?

The SAFE Act is intended to enhance consumer protection and reduce fraud by requiring MLOs to be licensed by the various states. Licensing requirements include testing, pre-licensure and continuing education, and background checks for criminal activity and financial responsibility. The licensing requirements are designed to increase integrity in the residential mortgage market.

3. What is a Mortgage Loan Originator?

An MLO is an individual who, for compensation or gain, engages in taking a mortgage transaction application or offering or negotiating terms of a mortgage transaction.

4. What is a Mortgage Transaction?

Mortgage Transaction means a credit transaction (loan or credit sale) that is or will be used by the debtor primarily for personal, family, or household purposes and is secured by a mortgage, or other equivalent consensual security interest on a dwelling or residential real estate.

A mortgage transaction includes a credit transaction secured by a mobile home, and a home improvement credit transaction secured by a mortgage or equivalent security interest on the home.

5. Who needs a Mortgage Loan Originator license from Indiana DFI?

Any person employed by a DFI licensed mortgage lender, or an entity exempt from licensing, and engaged in performing MLO activities, as defined. State and/or federal CUSO's would be exempt as an entity from licensing under IC 24-4.4-1-202(7). The MLOs who work for them would not be exempt if the employees meet the definition of an MLO under SAFE.

6. Has the NCUA issued a legal opinion on state licensing of Mortgage Loan Originators who work for state or federally chartered CUSOs?

Yes, NCUA issued a legal opinion dated October 3, 2008. It is available at this link:

<http://www.ncua.gov/Resources/RegulationsOpinionsLaws/OpinionLetters/2008/08-0843.pdf>

7. What is the date of state licensing for MLO's who are employees of state or federal CUSOs?

Licensing is required by July 1, 2010 for all employees of lenders or CUSOs who meet the definition of MLOs.

8. How does a state or federal CUSO file for a mortgage lending license exemption for the CUSO entity itself?

Information about filing an Exempt Company Registration can be found on the NMLS resource center at:

<http://mortgage.nationwidelicingsystem.org/slr/Pages/DynamicLicenses.aspx?StateID=INDFI>

This Internet site contains complete information on the requirements and process for filing for an exemption/license.

9. How does an individual apply for a mortgage loan originator license?

Information about making application for an MLO license can be found on the NMLS resource center at: <http://mortgage.nationwidelicingsystem.org/Pages/default.aspx>

This Internet site contains complete information on the requirements and process for making application for a license.

10. Are there any exemptions to licensing for mortgage loan originators?

There are no exemptions to licensing for MLOs. An individual that meets the definition in the DFI SAFE rule will need to be licensed.