

Regulatory Analysis
LSA Document #24-372**I. Description of Rule****a. History and Background of the Rule**

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act) is a federal law that mandates a nationwide licensing and registration system for residential mortgage loan originators (MLOs). The S.A.F.E. Act is designed to enhance consumer protection and reduce fraud through the setting of minimum standards for the licensing and registration of state-licensed MLOs.

The S.A.F.E. Act is implemented in Indiana through 750 IAC 9. It was first promulgated by the Department in 2009. It has been amended or readopted over the years.

This rulemaking was prompted by (1) a requirement of 2023's SEA 452 to amend 750 IAC 9 to conform with statutory changes which came at the request of a national home mortgage lender; and (2) the need to comply with the federal S.A.F.E. Act. First, SEA 452 directed the Department to make changes to 750 IAC 9 to conform with statutory changes that were requested by a mortgage lender. These changes amend the definition of employee in 750 IAC 9-1-1(18) to permit certain independent contractors to become licensed MLOs. Second, the amendment to 750 IAC 9-3-1 brings Indiana into compliance with the federal S.A.F.E. Act, specifically 12 CFR 1008, Appendix C. This section requires that state law provides that third-party loan processors and loan underwriters employ mortgage loan originators. To comply with that provision, a registration system for third-party loan processors and underwriters is required. The change provides for the registration system. Additionally, there are multiple technical amendments to 750 IAC 9 recommended by the Legislative Services Agency to comply with drafting practices.

b. Scope of the Rule

As discussed more fully below in Section IV, the proposed rule (1) amends the definition of employee in 750 IAC 9-1-1(18) to include independent contractors who meet defined criteria as added in a new section 750 IAC 9-3-1.2; (2) amends 750 IAC 9-3-1 to establish a system for registration of companies who offer loan processing and underwriting services and (3) makes numerous technical amendments in 750 IAC 9.

c. Statement of Need

The amendment to 750 IAC 9-1-1(18) to expand the definition of employee was prompted by a change in the law which requires the Department to adopt changes in 750 IAC 9 to conform with statutory changes adopted in 2023's SEA 452. Second, the amendment to 750 IAC 9-3-1 is required to comply with federal regulations implementing the S.A.F.E. Act. The amendments will bring Indiana into compliance with 12 CFR 1008, Appendix C by supporting a registration system for companies that perform mortgage loan processing and underwriting, including a mechanism for those companies to sponsor individuals who perform the processing and underwriting. Failure to meet the minimum requirements of the S.A.F.E. Act and implementing regulations could result in the Director of the Consumer Financial Protection Bureau asserting jurisdiction and supervising Indiana's mortgage lenders and administering the S.A.F.E. Act per 12 U.S.C. § 5107(a) and 12 C.F.R. 1008.115.

The third area of change to the rules include technical amendments in 750 IAC 9-1-1 and 750 IAC 9-3-1, that are necessary to improve grammar, align the rule with a renumbering of cited provisions in the Indiana Code and align the rule with current LSA formatting styles.

d. Statutory Authority for the Proposed Rule

IC 24-4.4 -1-101 defines IC 24-4.4 as the First Lien Mortgage Lending Act. IC 24-4.4-3 is the general authority empowering the Department to administer the First Lien Mortgage Lending Act.

IC 24-4.4-3-103 specifically authorizes the Department to "adopt, amend, and repeal rules, orders, policies, and forms to carry out the provisions of this article."

e. Fees, Fines, and Civil Penalties

The proposed rule does not add or increase any fees, fines or civil penalties. Accordingly, this rulemaking is not subject to the additional steps in IC 4-22-2-19.6.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule

30 days after filing with the publisher.

b. Estimated Fiscal Impact on State and Local Government

The proposed rule does not impact expenditures or revenues of local governments.

The proposed rule is not expected to impact expenditures by the Department.

The proposed rule is expected to have a minimal impact on the Department's resources. That conclusion is based on a nominal number of new applications of MLOs or company registrants resulting from the proposed rule.

The proposed rule is expected to result in a minimal increase of revenue to the Department. The Department staff expects to receive a nominal number of new applications from individuals who wish to become licensed MLOs resulting from the proposed rule. Some MLOs and companies have already chosen to voluntarily comply with the proposed amendments to 750 IAC 9-3-1. It is not possible to quantify the impact because it is unknown how many MLOs have already voluntarily complied and how many will choose to avail themselves of the proposed rule.

The Department charges \$100 for each MLO application. The Department charges no fee for a company registration. The Department charges \$100 each year for renewal of an MLO license. The Department charges no fee for renewal of a company registration. Currently, there are over 11,000 individuals licensed in Indiana as MLO's; however, the Department anticipates a minimal number of MLO application as a result of this change and therefore does not expect a fiscal impact. Finally, there are approximately twelve (12) companies registered with the Department, but any increase in registrations will not have a fiscal impact because there is no fee income associated with the registration and does not require additional labor expenditures by Department staff to review the registrations.

c. Sources of Expenditures or Revenues Affected by the Rule

The proposed rule is not expected to impact expenditures by the Department.

The proposed rule is expected to result in a minimal increase of revenue to the Department. The increase in revenue is based on receipt of a nominal number of new MLO applications resulting from the proposed rule. Such new revenue will continue each year, provided the MLO chooses to renew its license. The fiscal impact is imposed by the amendments to 750 IAC 9-1-1(18) and 750 IAC 9-3-1. Further, the registrations will not produce revenue.

The proposed rule does not impact expenditures or revenues by local governments.

III. Impacted Parties

The Department anticipates that the following parties will be affected by the rule: (1) mortgage companies that wish to use independent contractors to act as MLOs; (2) third party loan processor and underwriter companies will be required to register with the Department and certain MLOs will be required to be licensed with the Department, and (3) mortgage loan originators who desire to work as independent agents for mortgage companies pursuant to the rule's requirements.

IV. Changes in Proposed Rule

The changes to the proposed rule are summarized below. A redline draft of the proposed rule is contained below in Section X.

The following definitions in the proposed rule have been updated: 750 IAC 9-1-1(1), 750 IAC 9-1-1(2), 750 IAC 9-1-1(3), 750 IAC 9-1-1(4), 750 IAC 9-1-1(6), 750 IAC 9-1-1(9), 750 IAC 9-1-1(11), 750 IAC 9-1-1(14), 750 IAC 9-1-1(15), 750 IAC 9-1-1(16), 750 IAC 9-1-1(17), 750 IAC 9-1-1(18), 750 IAC 9-1-1(21), 750 IAC 9-1-1(22), 750 IAC 9-1-1(23), 750 IAC 9-1-1(24), 750 IAC 9-1-1(25), 750 IAC 9-1-1(27), 750 IAC 9-1-1(28), 750 IAC 9-1-1(29), 750 IAC 9-1-1(30), 750 IAC 9-1-1(31), 750 IAC 9-1-1(32), 750 IAC 9-1-1(33), 750 IAC 9-1-1(34), 750 IAC 9-1-1(35), 750 IAC 9-1-1(36), 750 IAC 9-1-1(37), 750 IAC 9-1-1(38), 750 IAC 9-1-1(39), 750 IAC 9-1-1(40), 750 IAC 9-1-1(41), 750 IAC 9-1-1(42), 750 IAC 9-1-1(43), 750 IAC 9-1-1(44) and 750 IAC 9-1-

1(46). Each change was to match the definition to the Indiana Code, to clarify the definition to avoid conflict with the Indiana Code or to clarify a definition not in the Indiana Code. In addition, 750 IAC 9-3-1.2 adds a new section that defines the criteria for the independent contractors to become licensed MLOs to promote consumer protection. This complies with statutory requirements of 2023 SEA 452.

750 IAC 9-3-1 governs the licensing of MLO's. The current version of 750 IAC 9-3-1 does not provide for: (1) supervision of individuals who act as third-party processors or underwriters; (2) a proper avenue for the registration of companies that do not originate mortgage transactions but provide mortgage loan processing and underwriting services and (3) a proper avenue for such companies to sponsor mortgage loan originators, which are required by federal law. Specifically, the amendments to 750 IAC 9-3-1 will bring Indiana into compliance with 12 CFR 1008, Appendix C. This complies with statutory requirements of 2023 SEA 452.

In addition, there are technical amendments to 750 IAC 9 to improve grammar and align the rule with current LSA formatting styles. Technical amendments are found in 750 IAC 9-1-1 and 750 IAC 9-3-1.

V. Benefit Analysis

a. Estimate of Primary and Direct Benefits of the Rule

The proposed amendment to 750 IAC 9-1-1(18) and addition of the new 750 IAC 9-3-1.2 benefits the mortgage industry. Permitting independent contractors to become licensed MLOs will benefit mortgage lenders as they will have a larger pool of candidates to perform loan origination activity. Independent contractor MLOs will enjoy the benefits of having a sponsoring company, including reliance upon the sponsor for compliance matters.

The proposed amendment to 750 IAC 9-3-1 benefits the mortgage industry by establishing a system for compliance with the federal S.A.F.E. Act and implementing regulations. The Department benefits from having a licensing program that complies with federal law.

The proposed technical amendments benefit the mortgage industry and the Department by bringing clarity and consistency to the proposed rule.

b. Estimate of Secondary or Indirect Benefits of the Rule

The proposed amendment to 750 IAC 9-1-1(18) and the addition of new 750 IAC 9-3-1.2 is anticipated to result in a minimal increase in the number of licensed MLOs. Consumers will have an opportunity to benefit from more choices of service providers.

The proposed amendment to 750 IAC 9-3-1 may result in the Department receiving fewer inquiries regarding whether a mortgage company that performs loan processing and underwriting must be registered and whether individuals who perform the loan processing and underwriting must be licensed.

c. Estimate of Any Cost Savings to Regulated Industries

The Department staff does not anticipate any cost savings to a regulated entity beyond the benefits noted above.

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities

No proposed amendment to 750 IAC imposes costs for regulated entities. The costs for regulated entities such as criminal background checks, credit checks, education requirements, preclicensing testing and surety bonds are already imposed by the existing 750 IAC 9.

Although no proposed amendment to 750 IAC 9 imposes costs, there are other existing indirect costs imposed by others on regulated entities. MLOs and company registrants are required to submit applications and renewals through a third party known as the Nationwide Multistate Licensing System, or NMLS. In addition to the Department's application fee of \$100, NMLS charges MLOs an initial processing fee of \$30, a \$15 credit report fee, and a \$36.25 criminal background fee. Additionally, there is a yearly Department renewal processing fee of \$100 for MLOs. NMLS charges company registrants an initial processing fee of \$100 and no yearly Department renewal processing fee.

Mortgage companies have no obligation to use independent contractors. However, if a company decides to use an independent contractor, there may be some ancillary costs associated with utilizing an independent

contractor as outlined below. Note, that this process will be similar to hiring an MLO as an employee, so the company would have most likely incurred some of these costs regardless of whether the individual is hired as an employee or an independent contractor. The potential costs are described as follows:

Mortgage companies and the independent contractor MLOs will be required to enter into exclusive written agreements for each independent contractor who wishes to act as an MLO. The parties may incur legal, record keeping and other compliance costs; however, the additional costs are expected to be minimal if the parties choose to enter into the arrangement.

Mortgage companies must maintain a bond that provides coverage for each independent contractor. The cost of the bond to hire the MLO as an independent contractor will be an additional cost. Note that a bond is already an existing requirement under 750 IAC 9-3-7 for MLOs who are employees, so this cost will mirror the cost associated with hiring an MLO as an employee.

An independent contractor who wishes to become a licensed MLO must hold a valid insurance producer license and mortgage companies must monitor the status of the insurance license. Note that it is not a requirement to hold a valid insurance producer license if the MLO is an employee. The Department does not expect that a significant number of individuals will obtain an insurance producer license so they may become independent contractors. The mortgage company may incur minimal costs to monitor the insurance producer license.

The costs referenced above are not readily monetized or quantifiable. The Department staff does not believe the costs will be significant, especially since the concept of independent contractor MLOs was specifically sought by a mortgage company.

b. Estimate of Administrative Expenses Imposed by the Rules

The proposed rule is relatively short. Consequently, the Department staff does not anticipate that regulated parties will spend substantial time to understand and comply with requirements. Indeed, some regulated parties are already in compliance as mentioned above. Further, a portion of the rule is optional and licensees are only required to comply with certain portions of the rule if they elect to utilize independent contractors as MLOs.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6

The proposed rule does not add or increase a fee, fine or civil penalty.

d. If the implementation costs of the proposed rule are expected to exceed the threshold set in IC 4-22-2-22.7(c)(6)

No, the Department staff determined that the implementation costs of the proposed rule are not expected to exceed the threshold set in IC 4-22-2-22.7(c)(6).

VII. Sources of Information

a. Independent Verifications or Studies

No studies were utilized in determining the impacts of costs and benefits concerning the proposed rule.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits

The Department staff consulted with a national mortgage company when developing portions of the rule related to independent contractor MLOs. In addition, the Department staff relied on its own records and good faith estimates, based on its knowledge and experience, for costs and benefits.

VIII. Regulatory Analysis

Regarding those portions of the proposed rule that expand the definition of employee to include independent contractors as sought by a national mortgage lender, no mortgage lender is required to use independent contractor MLOs. Use of independent contractor MLOs is a choice the mortgage lender makes, and the costs are only incurred if the entity chooses to use independent contractors. The proposed rule also brings the state in alignment with federal requirements concerning loan processors and underwriters, which is essential and benefits the state and all regulated entities. Therefore, the benefits of this rulemaking outweigh the costs.

IX. Contact Information of Staff to Answer Substantive Questions

George Dremonas
General Counsel
Indiana Department of Financial Institutions
30 South Meridian Street, Suite 200
Indianapolis, IN 46204
317-232-3955
gdremonas1@dfi.in.gov

Notice of First Public Comment Period with Proposed Rule: [20240925-IR-750240372FNA](#)

Notice of Determination Received: September 4, 2024

Posted: 09/25/2024 by Legislative Services Agency

An [html](#) version of this document.