



Key Points in the SAFE Act Final Rule from HUD

June 29, 2011

Background

Today, the U.S. Department of Housing and Urban Development (HUD) issued its long-anticipated final rule setting minimum standards for state licensing and registration of residential mortgage loan officers and federal oversight of the National Mortgage Licensing System and Registry (NMLSR) under the Secure and Fair Enforcement Mortgage Licensing Act (SAFE Act). The timing of this issuance comes less than a month before responsibilities for the SAFE Act move to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011. The rule will be effective 60 days after it is formally published in the *Federal Register*. Since it has not yet been published, references to page numbers are made to the printed version of the rule, available at http://www.ofr.gov/OFRUpload/OFRData/2011-15672_PI.pdf.

Key Issues to MBA

Loss Mitigation Specialists – The rule is silent on whether residential servicers engaged in loss mitigation are required to be registered/licensed. The preamble says that HUD has decided to leave this matter to the CFPB. MBA has advocated that servicers are not mortgage loan originators under the SAFE Act and should not be covered by the SAFE Act. MBA will continue to make this case to CFPB. (See pp. 44-46)

Individuals Involved in Loan Modification – The preamble states that HUD also has decided not to address the issue of whether these individuals should be licensed under the SAFE Act. MBA believes that third-party loan modification specialists are also outside of SAFE Act coverage and advocates this point. (See pp. 46-47)

Out-of-State Licenses/Reciprocity – While the rule does not require reciprocity for out-of-state licensees, the preamble indicates that this is a matter left to the states. MBA has supported reciprocity of state licenses and appreciates this response from HUD. (See pp. 71-72)

Provisional/Temporary Licensing – The rule is silent on whether loan originators coming from a registered entity can receive a provisional or temporary license until the state's licensing requirements are fulfilled. MBA believes that such temporary licensing should be regarded as permissible by the states and is working in coordination with state and local mortgage bankers associations to facilitate the enactment of temporary license legislation.

Loan Processors and Underwriters – HUD reiterates in the preamble its position that, “[A] loan processor or underwriter is not subject to licensing requirements if he or she performs his or her duties at the direction of and subject to the supervision and instruction of ‘a’ state licensed loan originator or registered loan originator.” (See pp. 83-88)

NMLSR Change – The preamble of the rule announces a change to authorize NMLSR to obtain applicant credit reports and records of administrative, civil or criminal findings. (See pp. 67-68)

Credit Score as Licensing Requirement – The preamble says that the rule does not preclude any state from considering a credit score as a factor in an applicant’s overall character and fitness determination. (See pp. 68)

Expungement of Prior Convictions – The preamble also indicates HUD reversed an earlier position and has concluded that pardoned and expunged convictions do not amount to convictions precluding licensing under the SAFE Act. MBA had strongly objected to HUD’s earlier position as unsupported by the SAFE Act and appreciates this change. (See pp. 65-66)

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