

The Secure and Fair Enforcement For Mortgage Licensing Act (SAFE Act)

MBA RECOMMENDS

Congress should amend the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE) to require that states recognize out-of-state licenses for loan originators or recognize them provisionally where the state's requirements differ significantly from other states. An amendment should also require states provisionally license originators of federally regulated institutions pending state licensure and registration.

Congress also should carefully monitor implementation of SAFE to ensure that it is serving its purposes of providing a national system to qualify and register loan originators. Some states have required licensure and registration of servicer employees, with the encouragement of HUD, notwithstanding that such an approach is inconsistent with the law and will hinder efforts to modify mortgage loans for troubled borrowers. Some states also have established minimum credit scores for originators that are inconsistent with other states' requirements and without clear basis.

BACKGROUND

SAFE establishes two parallel means of qualifying loan originators — one operated by the states and one by federal banking agencies. The states establish licensing and registration requirements for originators employed by state-regulated lenders and mortgage brokers. The federal banking agencies, through the Federal Financial Institutions Examination Council (FFIEC), develop and maintain a system for registering the loan originator employees of certain depository institutions and their owned and controlled subsidiaries regulated by federal banking agencies or the Farm Credit Administration.¹ Also, SAFE requires that registration of both federally regulated and state-licensed and registered loan originators be accomplished through the same system, the National Mortgage Licensing System and Register (NMLSR).

¹ SAFE Sec. 1507 12 U.S.C. 5106.

Under SAFE, HUD is also required to establish a backup licensing and registration system for states that do not timely implement their own system. In the event a state system does not meet SAFE's *minimum* requirements, HUD is to impose the backup system.

Although SAFE takes important steps toward consistent state licensing, the states have not implemented uniform requirements. Moreover, state and federal qualifications are inconsistent. Consequently, well-qualified mortgage originators confront difficulties in moving among states and between state and federal institutions by virtue of divergent qualifications including those for credit scores, education and testing to name a few. For these reasons, state-regulated companies, including smaller enterprises, face a competitive disadvantage in attracting qualified originators. As a result, consumers ultimately suffer from decreased choices and increased costs for sustainable housing finance.

Additionally, at the end of 2009, the federal banking agencies² and the Farm Credit Administration appear to have concluded their rulemaking, although final rules have not been issued. Among other things, they concluded that SAFE's definition of "loan originator" generally excludes employees engaged in loan modifications or assumptions and consequently such employees of institutions regulated by banking agencies and their

² Under SAFE Sec. 1502, 12 U.S.C. 5103, the federal banking agencies include the Board of Governors of the Federal Reserve System (Federal Reserve), the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA) and the Federal Deposit Insurance Corporation (FDIC).

subsidiaries will not be required to register with the NMLSR.³ Many state governments have also concluded that servicers and/or those engaged in loan modifications in some form are not covered by SAFE. Others have covered servicers expressly and still others await HUD's advice.

Also, at the end of 2009, HUD issued a proposed rule to implement its backup authority and the public comment period closed March 5, 2010. Under the proposal, HUD would augment and redefine statutory terms and extend the statute's reach. Although HUD indicates it is continuing to consider the matter of whether to require the states to treat servicer employees engaged in loan modifications as originators, the groundwork is laid by the proposed definitions for just such an outcome.

MBA POSITION

MBA is concerned about the fractured nature of a 50-state approach to licensing and registering loan originators and believes that HUD should do more to facilitate national licensing based on minimum requirements. SAFE was intended to establish a system that would not unduly burden well-qualified originators from moving among either state or federally regulated mortgage lenders.

MBA believes HUD should do considerably more to achieve SAFE's central objective of establishing uniform standards for loan originators of state-regulated lenders throughout the nation. HUD should work towards this end with federal banking agencies. HUD's efforts should include, for example, clearly providing that the law does not preclude the recognition of out-of-state licenses and provisional licensing of federally registered and other originators pending licensure.

In the meantime, MBA urges that SAFE be amended to require that states establish provisions to recognize out-of-state licenses. Where a state has requirements that differ significantly from

those of another state where a license has been issued, the state should provide a provisional loan originator license for a reasonable period of time, but not less than six months to permit satisfaction of licensing requirements. States also should establish provisions to permit registered loan originators who are required to be registered under SAFE to work as a loan originator for an institution where its originators are subject to state licensure, for a reasonable period of time, on a provisional basis, while seeking to meet the state licensing requirements.

Moreover, MBA has consistently taken the position that there is no basis under SAFE or its history to require that mortgage servicer employees be licensed and/or registered. Additional licensure and registration requirements under SAFE for persons engaged in loan modifications or assumptions, as proposed by HUD, will unnecessarily lessen the availability of loan modification specialists and increase servicing costs. It will also burden the ability of loan modification specialists to move between federal and state-licensed companies, decrease competition and, most importantly, hinder the ability of the industry and government to address the needs of borrowers facing foreclosure.

MBA strongly believes HUD should withdraw this portion of its proposal and make clear that the term "loan originator" was not intended to and does not encompass servicers, including those engaged in loan modifications and assumptions. MBA also asks Congress to carefully monitor the matter and to act if necessary to exempt servicer employees engaged in loan modifications from SAFE coverage to facilitate such modifications.

MBA is also concerned about the establishment of minimum credit scores for loan originators in some states. While it recognizes that some companies use credit scores for a variety of purposes, it does not believe there is sufficient data demonstrating a correlation between a particular credit score and qualification to serve as a loan originator that justifies embedding such requirements in law. Adoption of these requirements in some states worsens the patchwork of laws.

³ The joint final rule as adopted by the FDIC on November 12, 2009 at <http://www.fdic.gov/news/board/2009nov12no8.pdf>, pp. 24-25.