

Lenders Compliance Group

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S.A.F.E. ACT - Final Rule: Minimum Standards

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On June 29, 2011, the Department of Housing and Urban Development (HUD) announced publication of a **Final Rule setting the minimum standards** that states must meet to comply with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE) in licensing mortgage loan originators.

The Final Rule was published in the Federal Register on June 30, 2011 and is available in our library. (See below.)

The states and territories affected are: All 50 states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

The Final Rule recognizes the legislation adopted by these states and territories in support of SAFE and it seeks to provide clarification of the minimum standards against which each state's laws and regulations will be evaluated.

Effective Date: August 29, 2011

AUTHORITIES

While states are charged with enacting licensing standards that meet the requirements of SAFE, overall responsibility for interpretation, implementation, and compliance was delegated to HUD.

However, the SAFE Act was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and the authorities and duties delegated to HUD, relating to SAFE, will be transferred on July 21, 2011, to the new Consumer Financial Protection Bureau (CFPB) established by the Dodd-Frank Act.

HIGHLIGHTS

The Final Rule:

Explains the criteria that will be used to determine whether a state has put in place a system for licensing and registering mortgage loan originators as required by the SAFE. The rule does so by **clarifying the meaning of "engaging in the business of a loan originator,"** which determines whether an individual must be licensed, and the rule also provides that certain activities do not amount to engaging in the business of a loan originator.

Further clarifies that employees of government agencies and bona fide nonprofit organizations who act as loan originators only as part of their duties do not engage in the business of a loan originator and do not require licensure by states.

Does not define the terms of "loan originator" or "business of a mortgage loan originator" to include individuals who only engage in loan modifications or are third-party loan modification specialists. HUD is deferring to the CFPB the issue of whether such individuals should be licensed under SAFE or should otherwise be regulated under other CFPB regulatory authority.

REGULATORY FRAMEWORK

SAFE also mandates the creation of a **Nationwide Mortgage Licensing System and Registry (NMLSR)**. All states are asked to provide for a licensing and regulatory regime for all residential mortgage loan originators.

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To comply with SAFE, states have put in place statutory and regulatory frameworks that require originators to take initial and continuing education courses, pass a test, and undergo civil, criminal and financial background checks.

In any State that fails to have in place a licensing system that meets the minimum requirements, mortgage loan originators may be required to be licensed under a federal program.

Though minimum standards have been established and clarified, States have the right to enact additional legislation and rules, and to take actions that exceed the federal SAFE Act minimum requirements.

LIBRARY



SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities

FR 76/126 - June 30, 2011



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