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CFPB Issues S.A.F.E. ACT Examination Procedures

On March 7, 2012, the Consumer Financial Protection Bureau (CFPB) issued guidance regarding examination procedures pertaining to compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act or SAFE) examination procedures. This issuance pertains to examinations relating to federally registered individuals and their employers.

The guidance largely reconfirms information included in the final rule promulgated by the various federal banking regulatory agencies during 2010. For instance, similarities include definitions, *de minimis* exemptions, steps and procedures to obtain and maintain federal registration, and policies and procedures.

The examination procedures and criteria had been expected, and can be summarized, as follows:

Establish whether written **policies and procedures** have been adopted to assure compliance with the SAFE Act and applicable regulations.

Determine whether the **annual independent testing** of the institution's policies and procedures regarding compliance with the SAFE Act and applicable regulations has been conducted.

Evaluate whether any **deficiencies** identified during independent testing have been corrected and measures have been put into place to ensure that deficiencies do not recur.

In this newsletter, we will briefly outline the salient features of the SAFE examination for federally registered individuals and their employers.

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Examination Objectives

The SAFE examination objectives (which reflect procedures approved by FFIEC), must include these determinations:

- 1) Whether the financial institution has adopted **written policies and procedures** designed to assure compliance with the SAFE Act regulation.
- 2) Whether the **annual independent testing** of the institution's policies and procedures for assuring compliance with the SAFE Act regulation has been conducted.
- 3) Whether any **violations or deficiencies** identified during the independent testing have been corrected and that steps have been taken to ensure they do not recur.

Policy Statement

As in many other areas of regulatory compliance, establishing written policy and procedures for SAFE compliance is essential.

So, the following outline provides the necessary criteria that must be contained in such a policy statement.

In the case of SAFE compliance, the policy statement affects all covered financial institutions that employ individual MLOs, where MLOs act within the scope of their employment, and regardless of the application of any *de minimis* exception to their employees.

Furthermore, it should contain a requirement to conduct annual independent compliance tests to ensure compliance with the regulation.

Policies and Procedures

The following requirements must be contained in the SAFE written policies and procedures:

- Establish a process for identifying which employees of covered financial institutions must be registered.
- Require that all employees who are MLOs be informed of the registration requirements of the SAFE Act and SAFE Act regulation and instructed on how to comply.

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- Establish procedures to comply with the SAFE Act regulation's unique identifier requirements.
- Establish reasonable procedures for confirming the adequacy and accuracy of MLO employee registrations, including updates and renewals, by comparisons with its own records.
- Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures.
- Provide for annual independent testing for compliance with the SAFE Act regulation by institution personnel or an outside party.
- Provide for appropriate action if an employee fails to comply with the registration requirements of the SAFE Act regulations or the institution's related policies and procedures, including prohibiting such employees from acting as MLOs or other appropriate disciplinary actions.
- Establish a process for reviewing employee criminal history background reports received pursuant to the regulation, taking appropriate action consistent with applicable federal law¹⁴ and implementing regulations with respect to the reports, and maintaining records of the reports and actions taken with respect to applicable employees.

Establish procedures designed to ensure that any third party with which the institution has arrangements related to mortgage loan origination has policies and procedures to comply with the SAFE Act and SAFE Act regulation, including appropriate licensing and/or registration of individuals acting as MLOs.

Examination Procedures

Violations of SAFE requirements will be cited in the examination report and require corrective action. Any significant deficiencies in the institution's SAFE Act regulation policies and procedures or independent compliance tests will be documented in the examiner's workpapers and discussed in the examination report together with suggested corrective actions taken.

A covered financial institution should expect an examiner to **request documents** involving and existing procedures relating to:

- 1) Whether the financial institution, or any of its subsidiaries, has one or more MLO employees.
- 2) Whether the institution has adopted written policies and procedures and conducts annual independent compliance tests to assure compliance with the SAFE Act regulation.

In the course of the examination, the examiner will conduct the following **analysis**:

Determine that the financial institution has written policies and procedures, including the annual independent compliance tests, to assure that the institution has taken appropriate steps to implement compliance with the SAFE Act.

At minimum the **examiner will ask**:

Has a process been established for identifying which employees of the financial institution are required to be registered MLOs?

Are all employees of the financial institution who are MLOs required to be informed of the registration requirements of the SAFE Act and the SAFE Act regulation and be instructed on how to comply with such requirements and procedures?

Are procedures established to comply with the unique identifier requirements in Section 105 of the SAFE Act regulation?

Are there reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparisons with its own records?

What procedures have been established to tracking systems for monitoring compliance with registration and renewal requirements and procedures?

Does the institution provide for independent testing for compliance with the SAFE Act regulation conducted annually by institution personnel or by an outside party?

What measures are taken by the institution in the case of an employee who fails to comply with the registration requirements of the SAFE Act, the SAFE Act regulation, or the financial institution's policies and procedures, including prohibiting such employees from acting as an MLO or other appropriate disciplinary action?

Has the institution established a process for reviewing employee criminal history background reports received pursuant to the SAFE Act regulation, taking appropriate action consistent with applicable federal law and implementing regulations with respect to these reports, and maintaining records of these reports and actions taken with respect to applicable employees?

What are the established procedures designed to ensure that any third party with which the institution has arrangements related to mortgage loan origination has policies and procedures to comply with the SAFE Act, including appropriate licensing and/or registration of individuals acting as MLOs?

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Consumer Financial Protection Bureau

**SAFE Act Examination Procedures
Federal Registration Requirements**

3/7/12



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