



TITLE V—S.A.F.E. MORTGAGE LICENSING ACT
“Secure and Fair Enforcement for Mortgage Licensing Act of 2008”
FREQUENTLY ASKED QUESTIONS

Definitions

FFIEC: Federal Financial Institutions Examination Council.

NMLS: Nationwide Mortgage Licensing System, the current state licensing system.

NMLSR: Nationwide Mortgage Licensing System and Registry, the licensing system required under S.A.F.E. NMLS will become NMLSR when S.A.F.E. functionality requirements are added.

General

Question: How was the state’s “fair share” cost to participate in the NMLSR calculated, and when must these fees be paid?

Answer: The cost is for the development of NMLS. Both the CSBS and AARMR Boards committed that the states should pay for the system development cost, which is estimated at \$10 million. Each state’s fair share is based on the relative number companies it licensed at the time SRR made the calculation (see below). The fees should be paid on or before a state joins the system. To date, SRR has collected \$5.3 million of the \$10 million. States have obtained this money through appropriations, consent orders, or the budget process. Several states have far exceeded their fair share costs. A chart of each State’s share and contributions to date is available upon request. Calculation: the \$10 million was divided by the total number of company licensees for all states. The result was \$120 per company license.

Question: Who interprets the statutes?

Answer: The Department of Housing and Urban Development (HUD) will have the ultimate authority to interpret the federal law and whether a state meets the minimum standards to avoid HUD taking over the supervision of mortgage originators in that state. States will have the ultimate authority over their own statutes and may provide greater protections for consumers than the minimum standards set forth in the Federal statute.

Question: Who has been granted rulemaking authority?

Answer: The Department of Housing and Urban Development (HUD).

Question: What is the estimated time for NMLS to implement the requirements of the S.A.F.E. Act?

Answer: We are currently working on implementation plans for NMLSR and the states including the addition of system functionality required by the Act (consumer access, fingerprinting, testing and education tracking, and reporting of state enforcement actions). Some of this functionality may not be added to NMLSR by July 30, 2009 and would need to be done outside NMLSR. We expect to have the required pre-license test available

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during the second quarter of 2009. An approval plan for pre-licensure education course approval is currently being formulated.

Question: For the states that are not currently on NMLS, will they be allowed to access/extract information from the system in anticipation of the larger/current companies applying for the state licensing?

Answer: No. Only participants in NMLS have access to the system's data.

Question: Do existing licensees have to be on the NMLS by July 30, 2009?

Answer: The Act dictates that all mortgage originators have to be on NMLSR, within one year (or two years for state whose legislature meets biennial). States that have not come on NMLSR by July 30, 2009 will have to apply for an extension from HUD (up to 24 months) and show that they are making a good faith effort to get on NMLSR and become compliant with the Federal law. Each state must have a reasonable implementation plan in place as soon as possible.

Question: How will state confidentiality laws be preserved?

Answer: The Act allows a state to share information on NMLSR without losing any state confidentiality protections for that information. State freedom of information acts will be preempted for information shared on NMLSR by other states, except for publicly adjudicated enforcement items. If it is not your information in NMLSR, a state may not disclose the information except to the extent allowed by the state that provided shared the information with NMLSR.

Section 1503. Definitions

Question: According to the S.A.F.E. Act, the term "loan originator" is defined as an individual who (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain. This definition seems to provide a loophole for those that do not perform both of these functions. How should the states proceed to ensure that loan originators that do either of these tasks are covered by the requirements of the S.A.F.E. Act?

Answer: The working group that is developing model legislation for the states to adopt is also developing a slightly modified definition of "loan originator" in an effort to close a potential loophole created by this definition included in the S.A.F.E. Act. We believe that individuals that offer or negotiates terms should be considered a "loan originator" even if they are not the individual that initially "takes" a residential mortgage loan application and that would be consistent with the intent of the S.A.F.E. Act. The Federal law in this situation is a minimum standard, while the state model legislation will be more stringent.

Question: Are owners of mortgage broker companies that do not directly engage with consumers in taking loan applications and negotiating terms required to go through the fingerprint background checks and testing?

Answer: Under the S.A.F.E. Act, owners of mortgage broker companies that do not directly engage with consumers do not meet the definition of "loan originator" as defined in S.A.F.E., and therefore would not be required to go through background checks and/or

testing because of the S.A.F.E. Act; states are allowed to have more stringent requirements, however.

Question: “Real estate brokerage activity” is defined in Section 1503, but I cannot find where the term is used in the S.A.F.E. Act.

Answer: Real estate brokerage activity is used in the definition of “loan originator” in Section 1503.

Question: Are privately-insured credit unions included within the definition of “depository institution?”

Answer: Section 1503 states that “depository institution” has the same meaning as section 3 of the Federal Deposit Insurance Act, and includes any credit union. Therefore, the employees of privately-insured credit unions must be registered through protocols established by the FFIEC. However, privately-insured credit unions do not necessarily have a federal regulator to enforce the requirements of the S.A.F.E. Act. CSBS is working on developing language that could be used by states with privately insured credit unions to enforce those provisions.

Question: In Utah, the Department of Financial Institutions regulates those who make second mortgage, HELOC, and reverse mortgage loans. Does the S.A.F.E. act anticipate licensing of those individual loan originators?

Answer: S.A.F.E. covers everyone that does residential mortgage lending whether a first, second, HELOC, or reverse mortgage loan. The S.A.F.E. Act anticipates licensing or registration of anyone acting as a mortgage originator.

Question: Some state laws exclude certain market participants from the definition of “loan originator.” Would these laws remain effective?

Answer: The S.A.F.E. Act does not allow for any exclusion from state licensing of any individual that meets the S.A.F.E. definition of mortgage originator. All residential mortgage originators must be licensed or registered with NMLSR.

Section 1505. State License and Registration Application and Issuance

Question: Can a state have a two-tiered system to enable stricter requirements for designated brokers related to continuing education and testing?

Answer: Yes, as long as they are different license types. Education and testing standards must be consistent for each license type, but the standards can vary among the license types.

Question: If a loan originator that is currently licensed does not meet the criminal requirements of the S.A.F.E. Act, do they retain their license?

Answer: No. Loan originators must meet the standards set forth by the S.A.F.E. Act in order to be licensed. A current licensee with a felony conviction in the last seven years, for example, should lose his or her license, either through revocation or at renewal, in order for the state law to meet the requirements of the S.A.F.E. Act.

Question: What crimes are included in an act of fraud, dishonesty, a breach of trust, or money laundering?

Answer: Each state will determine if a felony meets this definition.

Question: How will the NMLS integrate the fingerprinting/background check and credit checks into the system? Will the NMLS be the repository for the fingerprints and responsible for the background and credit checks?

Answer: Yes, NMLSR will add this functionality of collecting and submitting fingerprints to the FBI and distributing the criminal background data to the state agency. Each Agency (not NMLSR) will be responsible for review and analysis of the criminal background data. Staff is currently working with FINRA to create a development schedule for this and other S.A.F.E. system requirements.

Section 1506. Standards for State License Renewal

Question: With respect to pre-license testing and continuing education, is it the state's responsibility to administer the examinations, or will outside vendors be used to administer the exams and then provide the results to the registry?

Answer: NMLSR plans to contract with vendors to develop the examinations (tests), conduct the examinations, and then report the results to NMLSR.

Question: Whose responsibility is it to pull an applicant's credit report and what standards will be used to judge an applicant's credit?

Answer: NMLSR will facilitate the pulling of credit reports. Each state regulator will be responsible for determining if the applicant "has demonstrated financial responsibility" as required by SAFE. CSBS is also working on developing uniform standards for this determination.

Question: Is the pre-licensing education requirement only applicable to new loan originator applicants, or is it retro-active for all currently-licensed loan originators?

Answer: This requirement applies to ALL loan originators. Both the testing and pre-licensing requirements must be fulfilled to obtain a license under the S.A.F.E. Act.

Question: Who will develop the courses for the continuing education requirements?

Answer: NMLSR is required by SAFE to approve pre-licensure and continuing education courses and course providers. In doing this, NMLSR will seek to leverage state expertise and experience in this area.

Question: Is there a target date for initiating the background checks, credit checks, and fingerprinting requirements?

Answer: Not at this time.

Question: The standards for renewal require the loan originator to meet the minimum standard for license issuance. Does this mean the originator has to re-submit to a criminal background and credit check every year at renewal time—or can we simply rely on their answers to questions about these subjects for renewal?

Answer: S.A.F.E. is unclear on this issue. NMLSR will likely be capable of both. The Department of Justice and the Federal Bureau of Investigation may have an update service we are researching which may make the issue irrelevant.

Question: *There is an annual renewal, correct?*

Answer: Yes and the annual renewal date is December 31. If your state currently has a different renewal date or frequency, you will be required to transition to a December 31 annual renewal date.

Section 1507. System of Registration Administration by Federal Agencies

Question: *Who will be housing the registry for banks, bank holding companies, etc.?*

Answer: The registration piece is to be coordinated through the Federal Financial Institutions Examination Council (FFIEC). States are represented on the FFIEC. The FFIEC can create its own system or use NMLSR. Regardless of the chosen solution, the information must eventually be housed in NMLSR for maintenance of the unique identifier, background check, and consumer access. If you should receive questions from your depository institutions regarding the registration system, tell them to wait for an announcement from the FFIEC or their primary federal regulator. It is unlikely there will be any public information regarding this for several months.

Section 1508. Secretary of HUD Backup Authority to Establish a Loan Originator Licensing System

Question: *Section 1508 requires state laws to establish “minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential loan originator...or a recovery fund paid into by loan originators.” If a state wishes to use the net worth or surety bond approach, what approach is contemplated in setting an appropriate amount? Surely the law does not intend to require a dollar-for-dollar calculation for loan originators who have originated many loans over the past.*

Answer: The requirement is not dollar-for-dollar, but rather a scaled requirement based on the dollar volume of loans originated.

Question: *West Virginia state law establishes a net worth **and** surety bond requirement for lenders and brokers. Is the provision in the S.A.F.E. Act a veiled attempt to push all states into creating a recovery fund for loan originators?*

Answer: The state recovery fund was put in at the last minute on behalf of the California DRE. This section of the bill is an effort to provide an option for states to meet the requirements of the S.A.F.E. Act. This is an opportunity to develop nationwide uniform standards for surety bonds that are scaleable.

Question: *It seems this requirement is geared towards assuring the information states submit to the NMLS is correct. Can a state limit the second opportunity for due process (if it is required), to provide the loan originator the opportunity to challenge the accuracy of the information the state reported?*

Answer: The data in NMLSR is owned by whoever submits it. Only the owner of the information can change it (e.g., licensing data is controlled by the licensee, license status

by the regulator, and enforcement actions by the regulator). Also, S.A.F.E. does not require distinct due process in NMLSR, but all states should have a due process procedure. NMLSR will have a procedure to determine if data provided is attached to the proper licensee.

Question: S.A.F.E. appears only to require licensing of individual loan originators. But some states also license the companies the individuals work for. State law may include a bonding requirement for the companies. If loan originators are required to work for a licensed company, is the bond provided by the company sufficient to meet this requirement, or must there also be an individual requirement of a minimum net worth, bond, or recovery fund?

Answer: We believe that it is a reasonable interpretation of the federal law that the scalable bond requirements for loan originators could be met at the company level.

Question: What are HUD's standards for a good faith effort?

Answer: HUD has not stated specific standards as of yet. However, accomplishments such as signing the Statement of Intent, introducing/adopting the model legislative language, or crafting an implementation plan may qualify.

Question: What if some states decide not to participate by not amending their state statutes to conform to the S.A.F.E. Act? Will there be a penalty? Will the state laws still be in effect?

Answer: HUD will be required to license loan originators in the state. The state will have no say in who conducts business in their state. While a state may maintain authority under their existing law, the authority will be subordinate to HUD. This structure will increase the regulatory burden and cost on the industry. HUD is not required to coordinate with the states. We intend to see all states join NMLSR.