
CONSUMER MORTGAGE COALITION

March 13, 2009

Mr. Paul Sanford
Executive Secretary
Federal Financial Institutions Examination Council
L. William Seidman Center
Mail Stop D 8073a
3501 Fairfax Drive
Arlington, VA 22226-3550

Re: SAFE Act Registration Requirements

Dear Mr. Sanford:

Thank you very much for taking time today to visit with me this past Wednesday concerning the SAFE Act registration requirement for mortgage loan originators. This letter follows up our conversation, with concerns that lenders have about the registration requirements.

Lenders are interested in helping to make the registration process go smoothly. Once the new system is established, a large number of registrants will crowd the system, and this start-up registration volume could cause delays in what would otherwise be an orderly process. We are therefore interested in finding steps lenders can take now to prevent an undue initial bottleneck. Lenders have two main concerns – identifying who will be required to register, and whether there is information lenders can begin to collect now, even before the formal registration process begins.

Who will be required to register?

The SAFE Act requires registration of “loan originators” who are employees of depository institutions, of subsidiaries of depository institutions regulated by a Federal banking agency, or of an institution regulated by the Farm Credit Administration.¹ Under the SAFE Act, the term loan originator:

- (i) means an individual who—
 - (I) takes a residential mortgage loan application; and

¹ Housing and Economic Recovery Act (HERA) § 1507(a) 122 Stat. 2654, 2817.

- (II) offers or negotiates terms of a residential mortgage loan for compensation or gain;
- (ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause[.]²

Depository institution lenders will need guidance to know which of their employees will fall into this definition. There is an exemption from the definition of loan originator for individuals who perform only administrative or clerical tasks on behalf of loan originators. How the regulators construe the terms “loan originator” and “administrative or clerical tasks” could have a significant effect on which individuals must register.

The American Association of Residential Mortgage Regulators (AARMR) and the Conference of State Bank Supervisors (CSBS) drafted model legislation for state adoption that would require state licensing, of loan originators who are not employees of depository institutions, if the individuals *either* take loan applications *or* offer or negotiate loan terms for compensation or gain. Depository institutions are concerned that they will be required to register far more people than they had anticipated. In particular, the AARMB / CSBS construction of the SAFE Act would require registration of a large number of depository institution employees who *service* existing, rather than *originate* new, loans.

In today’s environment, servicers are modifying a large number of existing loans. The modification process does involve offering or negotiating loan terms, but it does not involve taking a loan application because the loan has already been originated. Loan servicers, even when not modifying loans, often perform many functions that could be construed to involve offering or negotiating loan terms on existing loans. We do not believe Congress intended the SAFE Act to require the registration of the many loan servicing employees of depository institutions.

Loan servicers today are modifying an unprecedented number of mortgage loans nationwide. A new registration requirement that could reach a large number of loan servicers all at once could present an operational bottleneck on the urgent modification efforts.

Lenders would appreciate guidance on who will be required to register so they can begin preparing for registrations.

Steps lenders can take now to begin the registration process

Lenders are interested in beginning the process of collecting information that will be necessary to register loan originators. Although the actual registration requirements are not final, lenders would be able to begin collecting and assembling the information with guidance on what will be required.

For example, fingerprints and background information will be required. If lenders already have fingerprints of loan originators, will they be sufficient?


² HERA § 1503, 122 Stat. 2654, 2811.

Lenders are considering whether it would be appropriate to begin collecting information that individuals use to register with the Nationwide Mortgage Licensing System, on a Uniform Individual Mortgage License / Registration and Consent Form (Form MU4). It is considerably less burdensome to collect information from large numbers of individuals in one request, rather than having to make multiple requests for similar information from the same people. With some guidance from the FFIEC, lenders would be able to begin the collection process.

We would very much like to meet, either in person or by conference call, with you and the FFIEC/Farm Credit Administration Working Group to review these issues and suggest solutions. Any guidance that can be provided to lenders so that they can begin to prepare for registration would be most welcome.

Again, thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne C. Canfield", enclosed within a thin black rectangular border.

Anne C. Canfield
Executive Director