



## SAFE Act for Depository Institutions

On July 28, 2010, the Office of the Comptroller of the Currency, Federal Reserve, Federal Deposit Insurance Corporation, Office of Thrift Supervision, Farm Credit Administration and the National Credit Union Association (the Agencies) published final rules regarding the registration of mortgage loan originators. These final rules were adopted to implement the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). On January 31, 2011, the Nationwide Mortgage Licensing System and Registry started accepting registrations. On June 30, 2011 HUD issued final rules clarifying some of the provisions of the SAFE Act.

Updated Alert Date: October 28, 2011

Status: Effective October 1, 2010

July 29, 2011 – deadline for mortgage loan originators to register

HUD Rule – effective August 29, 2011

Links: [Final Rule - SAFE Act](#)

[Start of initial registration period – 1/31/2011](#)

[HUD Final Rule](#)

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The Agencies published a final rule on July 28, 2010 that requires their regulated institutions to ensure their mortgage loan originators are registered with the Nationwide Mortgage Licensing System and Registry (the Registry). The rule also requires the adoption of policies and procedures to ensure compliance with the SAFE Act.

Financial institutions were required to implement policies and procedures to comply with the SAFE Act by October 1, 2010, even though the national registration deadline was yet to be determined. On January 31, 2011, the Agencies announced that the Registry would start accepting registrations, thus giving financial institutions until July 29, 2011 to register their mortgage loan originators. Note that the purpose of the Registry is to be the repository of registrations; they will not screen or approve registrations that they receive.

### Who is a mortgage loan originator?

The SAFE Act defines a mortgage loan originator (MLO) as an individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan. The term does NOT include an individual who performs purely administrative or clerical tasks on behalf of an originator. The term mortgage loan originator was further clarified by HUD in its June 2011 rule. According to HUD, there are two elements necessary for an individual to be subject to the registration requirements: (1) the activities have to be carried out in a commercial context, meaning for profit, and (2) they must be carried out with some degree of habitualness or repetition, which may be met if the creditor itself provides mortgage financing or performs other origination activities with some degree of habitualness or repetition. If one of these two elements is missing, then the individual is not considered a mortgage loan originator subject to the registration requirements of the SAFE Act.

HUD further clarified what it means to take an application and to offer or negotiate terms. According to HUD, taking an application includes situations where the individual may receive an application directly or indirectly from the borrower. In addition, an offer must be presented for consideration by the prospective borrower and has to be for specific loan terms, rather than general.

### What transactions are covered by this rule?

A residential mortgage loan is defined as any loan primarily for personal, family or household use that is secured by:

- A mortgage or deed of trust security interest on a dwelling; or
- Residential real estate upon which is constructed or intended to be constructed a dwelling.

It includes refinancings, reverse mortgages, home equity lines of credit and other first and additional lien loans that meet the definition.

### What are the MLO's responsibilities?

Each employee that acts as a mortgage loan originator must:

- Register with the Registry by July 29, 2011. Information required includes:
  - Personal identifying information and financial services-related employment history;

- Criminal conviction offense and civil judicial action histories;
- Actions or final orders by a State or Federal regulatory agency entered against the employee;
- Any revocations or suspension of the employee's authorization to act as an attorney, accountant or State or Federal contractor;
- Customer-initiated financial services-related arbitration or civil action information against the employee; and
- Fingerprints.
- Obtain a unique identifier and provide it to consumers as required.
- Maintain registration in accordance with the requirements. This includes:
  - Renewal during the annual renewal period (November 1 through December 31 each calendar year); and
  - Updating the registration within 30 days if the registrant's name changes, the registrant ceases to be an employee of the institution or when registrant information becomes inaccurate, incomplete or out of date.
- Exception: The final rules include a registration exception for employees who have never been registered or licensed through the registry as an originator and who have acted as a mortgage loan originator for 5 or fewer residential mortgage loans during the last 12 months. Acts or practices to evade the limits of this exception are prohibited.

## What are the institution's responsibilities?

Each institution must:

- Adopt written policies and procedures to ensure compliance with this rule.
- Ensure that any designated system administrator authorized to enter Registry data is not an MLO, unless the institution employs 10 or fewer full time employees.
- Create their "base record" within the Registry in connection with the registration of their MLOs. This information must be updated within 30 days of when it becomes inaccurate, as well as renewed annually.
- Confirm information in the Registry regarding MLOs that they employ.
- Make unique identifier(s) of its registered MLOs available to consumers, as practicable (such as on a website or in other publicly accessible places or mediums).

## Recommendations for Next Steps

1. By October 1, 2010, implement written policies and procedures for compliance. At a minimum, address:
  - A process for identifying which employees are mortgage loan originators;
  - The requirement for all mortgage loan originators to be registered and how to comply;
  - Compliance with the unique identifier requirements;
  - Procedures for confirming the accuracy of registrations, updates and renewals;
  - Procedures and tracking systems for monitoring compliance with registration and renewal requirements;
  - Independent testing for compliance at least annually;
  - Appropriate action where an employee fails to comply with registration requirements;
  - A process for reviewing employee criminal history background reports; and
  - Procedures to ensure any third party with which you have arrangements related to mortgage loan origination has policies and procedures to comply with the SAFE Act.
2. Identify your mortgage loan originators and train them on the new requirements.
3. Determine where SAFE Act registration monitoring will occur. *Perhaps Human Resources.*
4. Determine whether independent testing will be handled internally or externally. *Perhaps by Internal Audit.*
5. Ensure the institution creates their base record and ensure mortgage loan originators are registered by July 29, 2011.

6. Ensure the institution and its registered mortgage loan originators make available and provide the MLO unique identifiers to consumers as required.