



State of Colorado
Department of Local Affairs
Division of Housing

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MEMORANDUM

Date: October 7, 2010

To: Pat Coyle, Rick Hanger

From: Ryan McMaken

Re: Licensure of loan originators at non-profit organizations

We have received questions from some non-profits regarding the necessity of licensure for employees engaging in loan originations for non-profit organizations. The question pertains to requirements set forth in the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" (also known as the SAFE Act).

This is an important matter for the Division of Housing since the Division provides grants to non-profits, housing authorities and other agencies for the purposes of making down payment assistance and rehabilitation loans to borrowers.

The SAFE Act covers any individual employed at a non-profit or government agency, and who accepts applications for residential mortgage loans, and who offers or negotiates terms of a residential mortgage loan for compensation or gain. This potentially covers loans made for purposes of down payment assistance or any other loan that is serviced through regular payments and involves a lien against a residence or could otherwise be defined as a mortgage. See the definition of "residential mortgage loan" in the SAFE Act found in 12 USC 5103. (online here: <http://mortgage.nationwidelicencingssystem.org/SAFE/NMLS%20Document%20Library/SAFE-Act.pdf>)

The HUD Q and A (<http://www.hud.gov/offices/hsg/ramh/safe/safeactfaq.pdf>) on the SAFE Act contains the following:

7. Exemption for Non-profit Organizations:

QUESTION: May a state provide an exemption for non-profit organizations?

ANSWER: No. Individuals, not organizations, are subject to the SAFE Act's licensing requirements. Accordingly, whether an organization has a non-profit status is not determinative as to whether individuals working for or on behalf of such an organization engage in the business of a loan originator and, accordingly, must be licensed. A state may not exempt individuals whose activities constitute "engaging in the business of a loan originator."

Since there is no exemption in the SAFE Act for individuals employed by non-profit organizations, it is clear that loan originators at non-profit organizations must be licensed.

However, it is necessary to establish that an employee is originating loans, and that those loans meet the definition of a residential mortgage loan.

The definition of "loan originator" in the act (12 USC 5103) is:

- (A) IN GENERAL.—The term "loan originator"—
- (i) means 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;

- (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;
- (iii) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator; and
- (iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.

The definition of “residential mortgage loan” in the act (12 USC 5103) is:

(8) RESIDENTIAL MORTGAGE LOAN.—The term “residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

If an individual at a non-profit, housing authority or similar agency is acting as a loan originator according to the definitions above, then the individual must be licensed under the SAFE Act.

The Colorado Division of Real Estate has developed a checklist for loan originators to assist in the licensing process. The checklist can be viewed at the DRE web site here: <http://www.dora.state.co.us/real-estate/applications/mortgagebroker/index.htm>

The SAFE Act is a federal statute enforced by state regulators in accordance with Colorado House Bills 09-1085 and 10-1141. The relevant statutes may be found in part 9 of article 61 of title 12, Colorado Revised Statutes. This text of House Bill 09-1085 is available online here: http://www.state.co.us/gov_dir/leg_dir/olls/sl2009a/sl_303.pdf And the text of House Bill 10-1141 is available here: <http://www.dora.state.co.us/real-estate/mortgagebrokerregistration.htm>

It should be noted that while House Bill 09-1085 exempted government agencies and affiliated organizations such as housing authorities from the licensure requirements, House Bill 10-1141 removed the exemption amid concerns that the exemption did not conform to the requirements of the SAFE Act.

House Bill 10-1141 also stipulates that organizations employing loan originators must be registered with the Nationwide Mortgage Licensing System (NMLS).

State statute is more widely applied than the SAFE Act in at least one regard: While the SAFE Act covers only loan originators that negotiate loans in exchange for compensation or gain, the state statute does not contain this qualifier. (See “definitions” under HB09-1085.)

The Division of Real Estate has provided a summary of the provisions of HB10-1141 here: <http://www.dora.state.co.us/real-estate/mortgage/documents/House%20Bill%2010-1141%20Summary.pdf>

Loan originators employed by non-profits, governments and housing authorities should become licensed in accordance with House Bills 09-1085 and 10-1141.

This memo should not be regarded as legal advice. All agencies who are involved in making loans to borrowers should consult their own legal counsel to ensure they are in compliance with the SAFE Act and all other relevant statutes and regulations.

The purpose of this memo is only to clarify that the SAFE Act does apply to individuals who are loan originators employed by non-profits and government agencies.