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SAFE Legislation, Mortgage Loan Originator Licensure, Mobile Home Dealers, Home Improvement Contractors, and Non-Profit Home Mortgage Creditors

Questions, Answers, and Administrative Interpretations

1. What is SAFE Legislation?

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, known as the SAFE Act, is federal legislation that was enacted as a partial response to the mortgage crisis that arguably resulted, in part, from a lack of appropriate monitoring, oversight, and regulation of the intermediaries between consumers and lenders in the residential mortgage industry; i.e., mortgage loan originators.

The federal SAFE Act requires each state to enact SAFE legislation or defer to the U. S. Department of Housing and Urban Development (HUD) for such regulation. State SAFE legislation must be compliant with the federal SAFE Act, and HUD is charged with the responsibility to monitor compliance. HUD has published proposed SAFE rules and is awaiting comments.

The SAFE-compliant administrative rule (750 IAC 9) promulgated by the Indiana Department of Financial Institutions (DFI) requires Mortgage Loan Originator (MLO) licensure by July 1, 2010. The SAFE rule is posted at: <http://www.in.gov/legislative/iac/T07500/A00090.PDF>

2. What does the SAFE Act attempt to achieve?

The SAFE Act is intended to enhance consumer protection and reduce fraud by requiring all MLOs to be licensed by the various states. Licensing requirements include testing, pre-licensure and continuing education, and background checks for criminal activity and financial responsibility. The licensing requirements are designed to increase integrity in the residential mortgage market.

3. What is a Mortgage Loan Originator?

An MLO is an individual who, for compensation or gain, engages in taking a mortgage transaction application or offering or negotiating terms of a mortgage transaction.

4. What is a Mortgage Transaction?

Mortgage Transaction means a credit transaction (loan or credit sale) that is or will be used by the debtor primarily for personal, family, or household purposes and is secured by a mortgage, or other equivalent consensual security interest on a dwelling or residential real estate.

A mortgage transaction includes a credit transaction secured by a mobile home, and a home improvement credit transaction secured by a mortgage or equivalent security interest on the home.

5. Who needs a Mortgage Loan Originator license from Indiana DFI?

Any person employed by a DFI licensed mortgage lender, or an entity exempt from licensing, and engaged in performing MLO activities, as defined.

6. Does Indiana DFI SAFE apply to manufactured housing retailers?

Indiana DFI SAFE does apply to manufactured housing retailers that are creditors on transactions secured by dwellings because credit sales secured by dwellings meet the definition of a “mortgage transaction.”

The MLOs employed by these creditors must be licensed, and the creditors must also be licensed as first lien mortgage lenders and provide bonding for the MLOs. Both the MLO and the dealer/creditor would apply for the required licenses via the Nationwide Mortgage Licensing System (NMLS).

A manufactured housing retailer is not a creditor, is not subject to licensing, and has no employees subject to SAFE licensing if the retailer only assists a consumer in filling out a third-party loan application and the retailer does not offer or negotiate loan rates or terms, does not provide any counseling with the consumer about loan rates and terms, and does not receive any payment or fee from any company for assisting the consumer with a mortgage transaction.

7. Does Indiana DFI SAFE apply to home improvement contractors?

Indiana DFI SAFE does apply to home improvement contractors that are creditors on transactions secured by dwellings because credit sales secured by dwellings meet the definition of a “mortgage transaction.”

The MLOs employed by these creditors must be licensed, and the creditor must also be licensed as first lien and/or subordinate lien mortgage lenders and provide bonding for the MLOs. Both the MLO and the contractor/creditor would apply for the required licenses via NMLS.

A home improvement contractor is not a creditor, is not subject to licensing, and has no employees subject to SAFE licensing if the contractor only assists a consumer in filling out a third-party loan application and the contractor does not offer or negotiate loan rates or terms, does not provide any counseling with the consumer about loan rates and terms, and does not receive any payment or fee from any company for assisting the consumer with a mortgage transaction.

8. How does a company apply for a mortgage lending license?

Information about making application for a first lien mortgage lending (FLML) or subordinate lien mortgage lending (SLML) license can be found on the NMLS resource center at:

<http://mortgage.nationwidelicencingsystem.org/Pages/default.aspx>

This Internet site contains complete information on the requirements and process for making application for a license.

9. How does an individual apply for a mortgage loan originator license?

Information about making application for an MLO license can be found on the NMLS resource center at: <http://mortgage.nationwidelicencingsystem.org/Pages/default.aspx>

This Internet site contains complete information on the requirements and process for making application for a license.

10. Are there any exemptions to licensing for mortgage loan originators?

There are no exemptions to licensing for MLOs. An individual that meets the definition in the DFI SAFE will need to be licensed.

The MLO may be employed by a company that is exempt from mortgage lender licensing requirements, and such companies must file an Exempt Company Registration via NMLS. Exemptions are detailed in IC 24-4.4-1-202 for first lien lenders and IC 24-4.5-1-202 for subordinate lien lenders.