



NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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February 12, 2010

The Honorable Shaun Donovan
Secretary of Housing and Urban Development
c/o The Regulations Division
Office of General Counsel
451 7th ST., SW
Washington, DC 20410-0500

Re: Docket No. FR5271-P-01
RIN 2502-A170

Transmitted electronically through <http://www.regulations.gov>

Dear Secretary Donovan:

I am writing on behalf of the 1.2 million members of the National Association of REALTORS® (NAR) to provide comments on HUD's proposed rule to implement the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act). The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

The SAFE Act requires states to establish loan originator registration requirements that meet minimum standards set by the SAFE Act. In accordance with proposed section 3400.105, to be eligible an individual:

- a) may never have had a loan originator license revoked;
- b) as a general rule, may never have been convicted of a felony during the preceding seven years or any time if the felony involved fraud, dishonesty, a breach of trust, or money laundering;
- c) must demonstrate financial responsibility, character, and general fitness;
- d) must complete at least 20 hours of pre-licensing education;
- e) must achieve a test score of at least 75 percent correct answers on a written test developed by the Nationwide Mortgage Licensing System and Registry (NMLSR);
- f) be covered by a net worth or surety bond requirement, or pay into a state fund;

- g) must submit fingerprints for submission to the Federal Bureau of Investigation and any government agency for a state and national criminal history background check; and
- h) must submit personal history and experience, including information related to government enforcement actions and an independent credit report.

The Act encourages the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish the NMLSR, which they have done. This nationwide mortgage licensing system and registry includes protocols for issuance of unique identifiers for registrants, receives and processes fingerprints for national and state criminal history background checks, reviews and approves pre-licensure and continuing education courses, develops a written test and approves test providers, develops a mortgage call report, and provides public access to licensing information.

If any states do not have a system in place that meets the minimum SAFE Act requirements, or do not participate in the NMLSR, HUD is required to establish a backup licensing system for those states. HUD may grant an extension of up to 24 months for states making a good faith effort to meet the minimum requirements. The state authority must ensure that all state-licensed loan originators are registered with the NMLSR, report violations to the NMLSR, and establish other requirements for establishing the licensing system

The proposal rule establishes minimum requirements for state licensing and registration program under the SAFE Act, the procedures HUD will use to determine whether a state is in compliance, the actions HUD will take if it determines a state is not in compliance or that NMLSR is not in compliance, and HUD's enforcement authority if it operates the system for non-compliant states. NAR has several suggestions for improving the rule.

Need to Broaden the Exemption for Seller Financing

The proposed rule would except from loan originator registration requirements those individuals who offer or negotiate the terms of a loan secured by their own residence (section 3400.103(e)(5)). The preamble explains that because this seller financing of a residence is not provided in a commercial context and occurs infrequently, HUD believes that "Congress did not intend to require such sellers to obtain loan originator licenses."

NAR welcomes this exemption and the decision by HUD to interpret the SAFE Act to include implied exemptions, but urges HUD to expand the exemption. This type of financing can be crucial in certain markets, especially in times of economic stress. Sellers providing financing for their own property are not routinely engaged in lending, and to the extent they know about the new requirements, are outraged that they are being required to take initial and continuing education courses, submit fingerprints for criminal investigations, demonstrate financial capacity, and otherwise comply with the SAFE Act. These seller financiers are typically homeowners and investors who, from time to time or once in a lifetime, sell property they own on contract to provide an income stream, often for retirement. The program requirements are aimed at loan originators who engage in lending activities as a profession, not as an incidental and occasional aspect of their investment activities.

If you nevertheless believe that some seller financiers should be required to register as loan originators, other ways to minimize unintended consequences and provide more flexibility should be adopted. Sellers who occasionally provide financing for property they own should be exempt. A seller who provides financing for 5 or 10 properties in a year is not in the routine business of financing real estate and does not do so in a commercial context. For example, consider a seller who owns an acre on each side of the home, sub-divides them into quarter acre lots zoned for home construction (which we believe would be covered by the rule), and provides financing over several years to generate a stream of income. Another example is an owner/occupant of a small apartment building who converts the property into a condominium and sells several units a year for several years. The resulting stream of income in these examples may be urgently needed for retirement or support after events such as disability, major illness, divorce, and loss of employment. It would be unduly burdensome to impose the requirements for loan originator registration in such cases. In effect, sellers such as these would be forced not to provide the financing, a result we do not believe Congress intended. Too often, especially in markets such as the Nation now faces, the result would be to make the sale impossible and deny owners the ability to support themselves with the income stream made possible from the sale of their real estate.

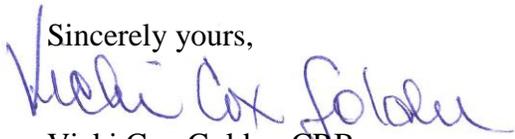
Another area where there is a compelling argument for more flexibility relates to the question of what counts as a residence under the exemption proposed in the rule that is limited to seller financing for the sale of a residence. The children of a deceased parent, or other heirs of a deceased individual, who sell the inherited home should also be exempt from the loan originator registration requirements if they provide financing. Another example that merits exemption is the sale of a former residence that has been rented out for a while, perhaps to allow the market to improve. These two examples both clearly meet the HUD test for qualifying for an exemption: they are not in a commercial context and they are infrequent. The rule should be amended to provide flexibility for these types of cases.

Clarification of Exemption for Licensed Real Estate Brokerage Activities

The proposed rule naturally includes the statutory exemption from the loan originator registration requirements for any individual who performs only real estate brokerage activities and is licensed or registered under state law. The exemption does not apply, however, to an individual compensated directly or indirectly by a lender, mortgage broker, or other loan originator (or by their agents). The question has arisen whether a licensed real estate practitioner who receives a real estate commission from a lender selling property owned due to foreclosure, or otherwise, loses this exemption. We think there is no question that the provision that denies the exemption to anyone receiving compensation from a lender only applies if the compensation received relates to the origination of a loan. General language in both the preamble and the proposed rule support this interpretation. To remove any confusion, however, NAR requests that you clarify this point with a specific example.

Thank you for the opportunity to present the views of the National Association of REALTORS®. If you have any questions or comments regarding this letter please contact Jeff Lischer, Managing Director for Regulatory Policy, at 202.383.1117 or jlischer@REALTORS.org.

Sincerely yours,



Vicki Cox Golder, CRB
2010 President
National Association of REALTORS®