

# Consumer Compliance (CC)

## **SAFE Act**

April 2012

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This booklet provides background information and optional expanded examination procedures for the consumer protection topics listed below.

Examiners should decide which of these procedures are necessary, if any, after completing a compliance core assessment as outlined in the “Large Bank Supervision” and “Community Bank Supervision” booklets of the *Comptroller’s Handbook*.

## Background and Summary

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008<sup>1</sup> (SAFE Act) was enacted on July 30, 2008, and mandates a nationwide licensing and registration system for residential mortgage loan originators (MLO).<sup>2</sup>

The SAFE Act prohibits individuals from engaging in the business of residential mortgage loan origination without first obtaining and maintaining annually:

- 1) For individuals employed by a covered financial institution, registration as a registered MLO and a unique identifier (federal registration); or
- 2) For all other individuals, a state license and registration as a state-licensed MLO, and a unique identifier (state licensing/registration).<sup>3</sup>

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<sup>1</sup> See 12 USC 5101-5116, Title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 122 Stat. 2654, 12 USC 5101 et seq.) as amended by Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) (Pub. L. No. 111-203, 124 Stat. 1376).

<sup>2</sup> More specifically, the SAFE Act required the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA), with the Farm Credit Administration (FCA), and through the Federal Financial Institutions Examination Council (FFIEC), to develop and maintain a federal system for registering MLOs employed by agency-regulated institutions.

<sup>3</sup> The SAFE Act authorized the U.S. Department of Housing and Urban Development (HUD) to monitor and enforce states’ compliance with the statute’s requirements for state licensing and registration. On June 30, 2011, HUD published a final rule setting minimum standards for state licensing and registration. 76 Fed. Reg. 38464 (June 30, 2011).

The SAFE Act requires that federal registration and state licensing and registration be accomplished through the same online registration system, the Nationwide Mortgage Licensing System and Registry (Registry).

The SAFE Act objectives include aggregating and improving the flow of information to and between regulators; providing increased accountability and tracking of MLOs; enhancing consumer protections; supporting anti-fraud measures; and providing consumers with easily accessible information at no charge regarding the employment history of MLOs and publicly adjudicated disciplinary and enforcement actions against MLOs.<sup>4</sup>

On July 28, 2010, the OCC, Board, FDIC, OTS, NCUA, and FCA (collectively, the agencies) published substantively similar regulations implementing the SAFE Act federal registration requirements for the institutions they supervise and the institutions' MLO employees (SAFE Act regulation).<sup>5</sup> On July 21, 2011, rulemaking authority for the SAFE Act transferred to the Consumer Financial Protection Bureau (CFPB).<sup>6</sup>

On December 19, 2011, the CFPB published for comment an interim final rule establishing a new Regulation G (SAFE Mortgage Licensing Act – Federal Registration of Residential Mortgage Loan Originators) and a new Regulation H (SAFE Mortgage Licensing Act – State Companies and Bureau Registration System).<sup>7</sup>

These examination procedures lay out the background and requirements of the SAFE Act and Regulation G (the SAFE Act regulation).

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<sup>4</sup> 12 USC 5101.

<sup>5</sup> 75 Fed. Reg. 44656 (July 28, 2010). The interagency Federal Register notice may be found at <http://edocket.access.gpo.gov/2010/pdf/2010-18148.pdf>. See also the revised Federal Register Preamble (August 23, 2010), available at <http://edocket.access.gpo.gov/2010/pdf/C1-2010-18148.pdf> (revising footnote numbering from the original release).

<sup>6</sup> On July 21, 2011, pursuant to the Dodd–Frank Act, the CFPB assumed: (1) responsibility for developing and maintaining the federal registration system (including rulemaking authority); (2) supervisory and enforcement authority for SAFE Act compliance for entities with assets greater than \$10 billion under the CFPB's jurisdiction; and (3) HUD's SAFE Act authority. Refer to Dodd–Frank Act sections 1025, 1061, and 1100. In addition, the Dodd–Frank Act merged functions of the OTS into the OCC, FDIC, and Board.

<sup>7</sup> 75 Fed. Reg. 78483 (December 18, 2011)

## Definitions

**Annual renewal period** means November 1 through December 31 of each year.

**Administrative or clerical tasks** means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the residential mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

**Covered financial institution** means any national bank, member bank, insured state nonmember bank, savings association, Farm Credit System institution, or federally insured credit union as any such term is defined in §1007.101(c)(1). Covered financial institution also includes a non-federally insured credit union that registers subject to the conditions of §1007.101(c)(3).

**Mortgage loan originator or MLO** means an individual who (1) takes a residential mortgage loan application *and* (2) offers or negotiates terms of a residential mortgage loan for compensation or gain.<sup>8</sup> The term *mortgage loan originator* does not include

- an individual who performs purely administrative or clerical tasks on behalf of an individual who is an MLO.
- an individual who only performs real estate brokerage activities (as defined in 12 USC section 5102(3)(D)) and is licensed or registered as a real estate broker in accordance with applicable state law, unless the individual is compensated by a lender, a mortgage broker, or other MLO or by any agent of such lender, mortgage broker, or other MLO, and meets the MLO definition.
- an individual or entity solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 USC section 101(53D).

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<sup>8</sup> By contrast, the Model State Law defines an MLO for state licensing and registration purposes as an individual who takes a residential mortgage loan application *or* offers or negotiates terms for compensation or gain. See, e.g., the Model State Law at <http://mortgage.nationwidelicingsystem.org/SAFE/NMLS%20Document%20Library/MSL-Final.pdf>.

Appendix A to the SAFE Act regulation provides examples of activities of taking a loan application and offering or negotiating loan terms that fall within or outside of the definition of MLOs for federal registration purposes.

**Nationwide Mortgage Licensing System and Registry, or Registry** means the NMLS system, developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the state licensing and registration of state-licensed MLOs, and through which federal MLO registrations must be accomplished.<sup>9</sup>

**Registered mortgage loan originator or registrant** means any individual who (1) meets the MLO definition and is an employee of a covered financial institution; and (2) is registered pursuant to the regulation with the Registry and maintains a unique identifier through the Registry.

**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, 15 USC section 1602(v)) or residential real estate upon which is constructed or intended to be constructed a dwelling (including manufactured homes) and includes refinancings, reverse mortgages, home equity lines of credit, and other first and additional lien loans.

**Unique identifier** means a number or other identifier that (1) permanently identifies a registered MLO; (2) is assigned by protocols established by the Registry and the CFPB to facilitate electronic tracking of MLOs, as well as uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against MLOs; and (3) must not be used for purposes other than those set forth under the SAFE Act.

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<sup>9</sup> See the Nationwide Mortgage and Licensing System and Registry Web site at <http://mortgage.nationwidelicencingsystem.org/fedreg/Pages/default.aspx>. System information on federal registration can be found under the Federal Registration tab at that site.

## De Minimis Exception

The SAFE Act regulation provides an exception to the MLO registration requirements for any employee of a national bank, member bank, insured state nonmember bank, savings association, Farm Credit System institution, or credit union who has never been registered or licensed through the Registry as an MLO if during the past 12 months the employee acted as an MLO for five or fewer residential mortgage loans.

When an institution relies on the de minimis exception in lieu of registration, the MLO employee must register prior to originating the sixth residential mortgage loan within a 12 month period. National banks, member banks, insured state nonmember banks, savings associations, Farm Credit System institutions, and credit unions are prohibited from engaging in any acts or practices to evade the registration requirement.

## Mortgage Loan Originator Registration Requirements

Each MLO employed by a covered financial institution must register with the Registry;<sup>10</sup> obtain a “unique identifier;” maintain the registration by updating certain information within 30 days of specified changes; and annually renew the registration during the annual renewal period.

### Initial Registration

Each employee of a covered financial institution who is an MLO must submit to the Registry the following:

- Identifying information, including name, home address, social security number, gender, date of birth, and principal business location;
- Financial-services-related employment history for the prior 10 years;
- Disclosure of specified criminal, civil judicial, or state, federal, or foreign financial authority regulatory actions against the employee; and
- Fingerprints, for purposes of a Federal Bureau of Investigation background check.

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<sup>10</sup> The original SAFE Act rules implementing federal registration took effect on October 1, 2010. The rule provided an initial registration period from January 31, 2011, to July 29, 2011, for MLOs who were employees of covered financial institutions.

The employee must attest to the correctness of the information submitted to the Registry; must authorize the Registry and the institution to obtain information related to any administrative, civil, or criminal action to which the employee is a party; and must authorize the Registry to make certain information available to the public.

## **Maintaining Registration**

### *Renewal*

An MLO must renew his or her registration during the annual renewal period by confirming and updating his or her registration records. This requirement does not apply to an MLO who completed his or her initial registration less than six months before the end of the annual renewal period.

### *Updates to Registration*

An MLO must update his or her registration within 30 days for specified significant changes, including name changes, employment termination, and reportable changes to legal or regulatory actions.

### *Previously Registered Employees—Change of Employment*

The regulations provide streamlined registration requirements for an MLO employee previously registered or licensed through the Registry who maintained this registration or license and who changes employment. Such an employee must update certain information, provide the required attestation and authorizations, and submit new fingerprints unless the employee has fingerprints on file with the Registry that are less than three years old. There is no grace period in this situation. An employee must update his or her Registry record before originating loans for the new employer.

### *Previously Registered Employees—Mergers, Acquisitions, or Reorganizations*

A registered or licensed MLO whose employment changes as the result of a merger, acquisition, or reorganization has 60 days from the effective date of a merger, acquisition, or reorganization to update information in the Registry.



# Financial Institution Requirements for MLO Registration, Renewal, and Changes to Information

## Required Financial Institution Information

In connection with the registration of one or more MLOs, covered financial institutions must submit certain required information to the Registry: name, main office address, and business contact information; Employer Tax Identification Number; Research Statistics Supervision and Discount (RSSD) number issued by the Board of Governors of the Federal Reserve System; primary federal regulator; name(s) of and contact information for the individual acting as the covered financial institutions primary contact for the Registry; name(s) and contact information of the individual(s) with authority to enter information into the Registry; and, if a subsidiary of a national bank, member bank, savings association, or insured state nonmember bank, indication of that fact and the RSSD number of the parent institution, as applicable. Once registered, the institution will receive an NMLS identification number to use in attesting to MLO employment and for other Safe Act related purposes.

## Attestation

An individual with authority to enter information in the Registry must verify his or her identity and attest that he or she has that authority, that the information is correct, and that the covered financial institution will keep the information current.<sup>11</sup>

## Registration

A covered financial institution must require an MLO employee to register with the Registry, maintain this registration, and obtain a unique identifier. A covered financial institution must also confirm each MLO's employment status once the MLO submits registration information to the Registry and before the registration is activated.

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<sup>11</sup> An institution may designate one or more individuals to serve as the system administrator(s) who may submit required information to the Registry on behalf of employees and attest to their authority to submit information, the accuracy of information submitted, and that the institution will keep information current and submit updates on a timely basis. System administrators generally may not be MLOs; however, an institution is exempt from this regulatory requirement if it has 10 or fewer full-time employees and is not a subsidiary.

Within 30 days of the date an MLO ceases to be an employee of the covered financial institution, the institution must notify the Registry of that fact along with the date the MLO ceased being an employee, so that consumers searching for an MLO in the publicly available consumer access portal know that the MLO no longer has a relationship with the institution.

### **Renewal and Updates**

A covered financial institution must update the information it submitted to the Registry during the annual registration renewal period and must confirm the registration information provided by MLO employees during this period.

An institution must update the required institution information provided to the Registry within 30 days of any change in such information.

## Policies and Procedures

Covered financial institutions that employ one or more MLOs must adopt and follow written policies and procedures to carry out their SAFE Act responsibilities.<sup>12</sup> The requirement to adopt and follow policies and procedures applies to all covered financial institutions that employ individual MLOs who act as MLOs within the scope of their employment, and regardless of the application of any de minimis exception to their employees. In addition, covered financial institutions must conduct annual independent compliance tests to ensure compliance with the regulation. The policies and procedures must be appropriate to the nature, size, complexity, and scope of the institution's mortgage lending activities, and apply only to those employees acting within the scope of their employment at the institution. The policies and procedures must

- establish a process for identifying which employees of the covered financial institution must be registered;
- require that all employees who are MLOs be informed of the registration requirements of the SAFE Act and SAFE Act regulation, and instructed on how to comply;
- establish procedures to comply with the SAFE Act regulation's unique identifier requirements;
- establish reasonable procedures for confirming the adequacy and accuracy of MLO employee registrations, including updates and renewals, by comparisons with its own records;
- establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;
- provide for annual independent testing for compliance with the SAFE Act regulation by covered financial institution personnel or an outside party;
- provide for appropriate action if an employee fails to comply with the registration requirements of the SAFE Act regulations, or the institution's

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<sup>12</sup> The Registry and the agencies do not screen or approve registrations received from employees of covered financial institutions.

related policies and procedures, including prohibiting such employees from acting as MLOs or other appropriate disciplinary actions;

- establish a process for reviewing employee criminal history background reports received pursuant to the regulation, taking appropriate action consistent with applicable federal law<sup>13</sup> and implementing regulations with respect to the reports, and maintaining records of the reports and actions taken with respect to applicable employees;<sup>14</sup> and
- establish procedures designed to ensure that any third party with which the covered financial institution has arrangements related to mortgage loan origination has policies and procedures to comply with the SAFE Act and SAFE Act regulation, including appropriate licensing and/or registration of individuals acting as MLOs.<sup>15</sup>

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<sup>13</sup> Including section 19 of the Federal Deposit Insurance Act (FDI Act) (12 USC 1829); section 5.65(d) of the Farm Credit Act of 1971 as amended (12 USC 2277a-14(d)); or section 206 of the Federal Credit Union Act (12 USC 1786(i)).

<sup>14</sup> Section 19 of the FDI Act (12 USC 1829) prohibits, without the prior written consent of the FDIC, insured depository institutions from employing a person who has been convicted of any criminal offense involving dishonesty, breach of trust or money laundering, or has entered into a pretrial diversion or similar program in connection with a prosecution for such offense. See the *FDIC Statement of Policy for Section 19 of the FDI Act*, 63 Fed. Reg. 66184 (December 1, 1998; amended May 10, 2011), available at [www.fdic.gov/regulations/laws/rules/5000-1300.html](http://www.fdic.gov/regulations/laws/rules/5000-1300.html).

<sup>15</sup> See FFIEC *Statement on Risk Management of Outsourced Technology Service* (November 28, 2000) for guidance on the assessment, selection, contract review, and monitoring of a third party that provides services to a regulated institution. See also *FDIC Guidance for Managing Third-Party Risk* (FIL-44-08); OCC Bulletin 2001-47, *Third-Party Relationships* (November 1, 2001); NCUA Letter to Credit Unions: 01-CU-20, *Due Diligence Over Third-Party Service Providers* (November 2001), 07-CU-13, *Supervisory Letter-Evaluating Third-Party Relationships* (December 2007), 08-CU-09, *Evaluating Third-Party Relationships Questionnaire* (April 2008).

## Unique Identifier

When an MLO registers with the Registry, he or she receives a unique identifier—a series of numeric characters assigned for life. The unique identifiers allow MLOs to be tracked if they move between state and federal jurisdictions and/or change employers, and the identifiers help consumers find certain information about an MLO by searching on the Registry’s consumer access portal. The MLO information publicly available on the consumer access portal will ultimately include federal and state registrations and licenses held, the MLO’s employment history, and publicly adjudicated disciplinary and enforcement actions, if any.

To make sure that consumers have access to an MLO’s unique identifier before committing to a mortgage loan transaction, an MLO must provide the unique identifier upon request (orally or in writing), before acting as an MLO (orally or in writing), and in any initial written communication (paper or electronic) from the MLO to the consumer (such as a commitment letter, good faith estimate, or disclosure statement). MLO unique identifiers may be used on written materials or promotional items distributed by the institution for general use, for example, on loan program descriptions, advertisements, business cards, stationary, notepads, and similar materials; the SAFE Act regulation does not prohibit such use.

The regulation also requires covered financial institutions to make MLO unique identifiers available to consumers in a practicable way. This could be achieved, for example, by

- directing consumers to a listing of registered MLOs and corresponding unique identifiers on the institution’s Web site;
- posting the information prominently in a publicly accessible place, such as a branch office lobby or lending office reception area; or
- establishing a process to ensure that institution personnel, including employees other than the MLO, provide MLO unique identifiers when requested by consumers.

## Relation to Other Laws

### TILA, GSE, and HUD Requirements

Title XIV, Section 1402 of the Dodd-Frank Act amended the Truth in Lending Act (TILA) to require MLOs to include on all loan documents any unique identifier of the MLO provided by the NMLS and to require the CFPB to issue implementing regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor compliance with the SAFE Act's federal registration requirements.<sup>16</sup>

In 2009, the Federal Housing Finance Agency directed government-sponsored enterprises (GSE) Fannie Mae and Freddie Mac to require mortgage loan applications to include the MLO's unique identifier.<sup>17</sup> The GSEs announced that for federally regulated institutions, the unique identifier information is required for all applications on or after July 29, 2011.<sup>18</sup>

On January 5, 2011, HUD issued a mortgagee letter requiring the collection of NMLS unique identifiers for all individuals and entities participating in the origination of Federal Housing Administration (FHA) loans beginning in August 2011.<sup>19</sup> The mortgagee letter also requires all FHA-approved mortgagees and their employees to comply with the NMLS registration requirements and "entities with jurisdiction over their activities" must register in accordance with the guidance set forth by NMLS.

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<sup>16</sup> See Pub. L. No. 111-203 (July 21, 2010), available at [www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf](http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf) (p. 2139).

<sup>17</sup> See the FHFA news release at [www.fhfa.gov/webfiles/400/LoanOrigIDS11509.pdf](http://www.fhfa.gov/webfiles/400/LoanOrigIDS11509.pdf).

<sup>18</sup> See Fannie Mae and Freddie Mac Frequently Asked Questions at [www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/pdf/mortgageloandelreqsfaqs.pdf](http://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/pdf/mortgageloandelreqsfaqs.pdf) and [www.freddiemac.com/sell/secmktg/loan\\_level\\_faq.html](http://www.freddiemac.com/sell/secmktg/loan_level_faq.html).

<sup>19</sup> See Mortgagee Letter 2011-4 at <http://portal.hud.gov/hudportal/documents/huddoc?id=11-04ml.pdf>.

## Laws

12 USC 5101 *et seq.*, Secure and Fair Enforcement for Mortgage Licensing Act of 2008, as amended by Dodd–Frank section 1100(5)

## Regulations

12 CFR 1007 – SAFE Mortgage Licensing Act – Federal Registration of Residential Mortgage Loan Originators (Regulation G)

## Objectives

1. To determine whether national banks and federal savings associations with total assets of \$10 billion or less that are not affiliated with an insured depository institution with assets of more than \$10 billion (collectively, banks) have adopted written policies and procedures designed to assure compliance with the SAFE Act regulation.
2. To determine whether the annual independent testing of the bank's policies and procedures for assuring compliance with the SAFE Act regulation has been conducted.
3. To determine whether any violations or deficiencies identified during the independent testing have been corrected and that steps have been taken to ensure they do not recur.



## SAFE Act Examination Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training, as appropriate. Complete only those sections of the worksheet that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a “no” answer indicates a possible exception or deficiency and should be explained in the work papers. When performing expanded procedures, a “no” answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate “NA.”

### SAFE Act Worksheet

Underline the applicable use: **Audit**      **Bank Policies**      **Expanded Procedures**

<b>Subpart A</b>			
<b>Initial Notice</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>
1. Does the bank, or any of its subsidiaries, employ one or more MLOs? For those banks without any MLOs, these examination procedures do not need to be completed.			
2. If the bank has MLOs, has the bank adopted written policies and procedures and does it conduct annual independent compliance tests to assure compliance with the SAFE Act regulation? If the bank has failed to adopt policies and procedures and to perform annual independent compliance tests, the examiners should address the violation in the examination report and require corrective action.			
3. Has the bank taken appropriate steps to assure compliance with the SAFE Act that at a minimum:  (a) establish a process for identifying which employees of the bank are required to be registered MLOs;  (b) require that all employees of the bank who are MLOs be informed of the registration requirements of the SAFE Act and the SAFE Act regulation and be instructed on how to comply with such requirements and procedures;  (c) establish procedures to comply with the unique identifier requirements in 12 CFR 1007.105;			

<b>Subpart A</b>			
<b>Initial Notice</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>
<p>(d) establish reasonable procedures for confirming the adequacy and accuracy of MLO employee registrations, including updates and renewals, by comparisons with its own records;</p> <p>(e) establish procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;</p> <p>(f) provide for independent testing for compliance with the SAFE Act regulation conducted annually by bank personnel or by an outside party;</p> <p>(g) provide for appropriate action in the case of an employee who fails to comply with the registration requirements of the SAFE Act, the SAFE Act regulation, or the bank’s policies and procedures, including prohibiting such employees from acting as an MLO or other appropriate disciplinary actions;</p> <p>(h) establish a process for reviewing employee criminal history background reports received pursuant to the SAFE Act regulation, taking appropriate action consistent with applicable federal law, including section 19 of the Federal Deposit Insurance Act (12 USC § 1829), and implementing regulations, and maintaining records of these reports and actions taken with respect to applicable employees; and</p> <p>(i) establish procedures designed to ensure that any third party with which the bank has arrangements related to mortgage loan origination has policies and procedures to comply with the SAFE Act, including appropriate licensing and/or registration of individuals acting as MLOs?</p>			
<p>4. Any significant deficiencies in the bank’s SAFE Act regulation policies and procedures or independent compliance tests should be documented in the workpapers and discussed in the examination report together with corrective actions taken.</p>			