

# SAFE Act – Remaining Ambiguities

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# All We Need is Certainty

- **“We believe there are *ambiguities* in the **SAFE Act**”** (HUD July 13, 2010 FAQ)
- **“Understandable *confusion*”**  
(Michigan July 30, 2010 Bulletin)
- **“SAFE Act does *not* provide a *clear* threshold”** (NMLS Policy Guidance on Non-Profits)
- **“*Daunting* task for industry”**  
(South Carolina July 27, 2010 Extension Memo)
- **“There is *debate or uncertainty*”**  
(Frank/Bachus Letter to HUD July 22, 2010)

# Take an Application (States)

- **Recording** the borrower's application information in any form for use in a credit decision; or
- **Receiving** the borrower's application information in any form for use in a credit decision.
- Completing or assisting a borrower in the completion of an application, or assisting the borrower in making an application for a loan
- Assisting may include instructing or otherwise directing a borrower in completing any sections of an application form or providing advice or counsel in the lending process, *but does not include communication of **generic information** related to the process, such as the typing of information necessary to complete a form.*

# 3 Definitions of Mortgage Originator

(will the real mortgage loan originator please stand up?)

## TILA Mortgage Originator

any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain:

(i) takes a residential mortgage loan application;

*(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan;*

**or**

(iii) offers or negotiates terms of a residential mortgage loan.

## SAFE Act Loan Originator

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.



<http://www.youtube.com/watch?v=VxEa1hCxETA>

## Model State Law Mortgage Loan Originator

an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; **or**

(ii) offers or negotiates terms of a residential mortgage loan.

# Assisting a Consumer in Obtaining or Applying?

a person 'assists a consumer in obtaining or applying to obtain a residential mortgage loan by, among other things:

- advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages; or
- collecting information on behalf of the consumer with regard to a residential mortgage loan.

## Who is NOT a Mortgage Loan Originator?

- A servicer or servicer employees
- an employee of a retailer of manufactured homes
- a person who performs purely administrative or clerical tasks
- a person or entity that only performs real estate brokerage activities

# Responsibility of MLO under Dodd/Frank

## Duty of Care

- must be licensed as a “mortgage originator”<sup>1</sup> in accordance with state or federal law, including SAFE Act.

(Congress has made a clear statement loan servicers and mh retailers are not required to be licensed under SAFE Act)

1. Do we determine who is a mortgage originator for licensing purposes using the new TIL definition or SAFE or state law definition?

# Mortgage Originator Liability Under TILA

- Civil Liability
- Actual damages
- Costs to the consumer of the action, including reasonable attorney's fees
- Plus all state law penalties!

# Federal Agencies Final Rules

- The SAFE Act definition of mortgage loan originator generally would not include employees engaged in loan modification or assumptions

# State Interpretation of Exemption for Employees of Depository Institutions

## Exemptions –

Registered mortgage loan originators, when acting for Depository institutions or for a subsidiary that is owned and controlled by such institution.

"Registered mortgage loan originator" means any individual who:

(a) Meets the definition of mortgage loan originator and is an employee of:

(1) A depository institution;

(2) A subsidiary that is:

(A) Owned and controlled by a depository institution; and

(B) Regulated by a federal banking agency; or

(3) An institution regulated by the Farm Credit Administration; and

(b) Is registered with, and maintains a unique identifier through, NMLSR as required by the federal banking agencies.

# Industry Concern

- *If states are confused & struggling,*
- *HUD agrees there are ambiguities,*
- *Congress is directing HUD to provide guidance where there is debate and uncertainty,*
- *yet we still have no guidance – how will the law be settled?*
- *I fear through enforcement.*