



Department of Commerce

Division of Financial Institutions

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Department of Commerce Division of Financial Institutions Overview of Ohio's SAFE Act Enabling Legislation – HB 1 October 2009

In July 2008, Congress passed the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act") as part of the Housing and Economic Recovery Act of 2008. The SAFE Act requires all loan originators, regardless of their employer, to register with the National Mortgage Licensing System and Registry (NMLS) and creates minimum standards for licensure of state regulated loan originators for all fifty states. In addition to the minimum licensing standards, SAFE charged the U.S. Department of Housing and Urban Development ("HUD") with ensuring that all fifty states have a licensing and regulatory scheme which complies with SAFE and that all state licensing laws and regulations adhere to objectives outlined in the legislation, which include providing a uniform licensing scheme and reporting requirements, enhancing consumer protections and supporting anti-fraud measures and establishing a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interest of the consumer.¹

The SAFE Act legislation developed by the Ohio Department of Commerce, Division of Financial Institutions was designed to implement the provisions of the SAFE Act; maintain the existing high standards established for mortgage brokers in SB 185; extend the existing Ohio Mortgage Broker Act ("OMBA") consumer protections to the Ohio Mortgage Loan Act ("OMLA") and create a comparable licensing and regulatory scheme for individual loan officers previously exempt under the OMLA. Below is an overview of the key provisions which were included in HB1 and will become law in Ohio effective January 1, 2010.

Licensing Loan Originators and Employers

- Requires all residential mortgage loan originators to be state-licensed even when employed by a company that qualifies for an exemption. Exception: Mortgage loan originators employed by federally insured depository institutions, credit unions or subsidiaries of these institutions that are federally supervised are exempt from state licensure requirements because they will be registered with the NMLS under federal law. Consistent with the OMBA and proposed Federal SAFE Act rule for depositories, employers of mortgage loan originators and other lenders must also be

¹ Other objectives include (1) providing a comprehensive licensing and supervisory database; (2) aggregating and improving the flow of information to and between regulators; (3) providing increased accountability and tracking of loan originators; (4) streamlining the licensing process and reducing regulatory burden; (5) providing consumers with easily accessible information, offered at no charge, utilizing electronic median, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against loan originators; (6) facilitating responsible behavior in the subprime mortgage market place and providing comprehensive training and examination requirements related to subprime mortgage lending; and (7) facilitating the collection and disbursement of consumer complaints on behalf of state mortgage regulators.

registered or otherwise subject to federal or state-regulatory supervision² so that DFI has effective oversight to ensure loan originators are complying with the SAFE Act.

- All mortgage loan originators must undergo criminal, civil and credit background checks, meet pre-licensure education (24 hours in OMBA and 20 hours in OMLA) and testing requirements, complete continuing education requirements (8 hours), and obtain a valid surety bond commensurate with their origination volume.
- To qualify for a mortgage loan originator license, applicants must demonstrate financial responsibility and general character and fitness, and score at least 75% on a national and state test. Applicants are disqualified if the applicant has had a mortgage loan originator license revoked, has been convicted of or pled guilty to a felony in the last seven years, has ever been convicted of or pled guilty to a felony involving theft, fraud, dishonesty, breach of trust or money laundering, or has been convicted of or pled guilty to a misdemeanor theft offense in the last seven years.

Approved Exemptions from the OMBA and OMLA

- Beginning in January 2010, mortgage bankers will be required to apply to the Division for an approved exemption under the OMBA.
 - The exemption application includes an attestation that all owners and officers meet the same background requirements established for loan originators.
 - Companies receiving an approved exemption are subject to examination by the Division, have an affirmative duty to supervise the conduct of their loan originators, shall maintain the records of all transactions relating to the conduct of its loan originators, and must renew their approved exemption annually.
- Beginning in January 2010, credit union service organizations will be required to apply to the Division for an approved exemption under the OMBA and OMLA, as appropriate based on their lending activity and corporate structure.

Surety Bond Requirements

- All loan originators must be covered by a surety bond in an amount commensurate with the aggregate loan amount of residential mortgage loans originated in the preceding calendar year.
 - The amount of the bond must be equivalent to 0.5% of the prior year's origination volume.
 - The amount of the company bond is capped at \$150,000 (If a loan originator carries an individual bond, the cap is \$100,000.)
 - The minimum acceptable bond for registrants and licensees is \$50,000 for the main office plus \$10,000 per branch office.
 - Registrants are required to cover the loan originators they employ. Companies holding an approved exemption may also choose to cover the loan originators they employ with a company bond.

² Federal and state chartered banks, savings banks, trust companies, savings and loan associations, credit unions or subsidiaries regulated by federal regulators are otherwise subject to federal or state supervision. Mortgage bankers may receive an approved exemption from registering under the Mortgage Broker Act so long as the mortgage banker provides to DFI a list of licensed mortgage loan originators and other information as specified by statute.

Improved Disclosure Standards, Duties and Prohibited Acts

- Expands protections for borrowers in the Ohio Mortgage Broker Act (many enacted as part of S.B. 185) to real estate lending regulated by Ohio Mortgage Loan Act, including:
 - A requirement that OMLA registrants designate a primary point of contact for DFI;
 - Prohibitions against making false or misleading statements of material facts, omissions of statements required by state or federal law, or false promises regarding material facts through advertising or other means. In addition, a licensee or registrant is prohibited from knowingly soliciting fraudulent, false or misleading statements on any document related to a mortgage loan;
 - A requirement to timely inform the buyer if any fee payable by the buyer to the licensee, registrant, or lender increases by more than 10% or \$100, whichever is greater;
 - A requirement to timely inform borrowers of a change in the regular total monthly payment, including principal, interest, any required mortgage insurance and any escrowed taxes or property insurance, of more than 5%;
 - Standards of care to require a licensee or registrant to safeguard and account for any money handled for the borrower, follow reasonable and lawful instructions from the borrower, act with reasonable skill, care and diligence, and act in good faith and with fair dealing in connection with making or originating loans; and
 - Prohibitions against coercion of appraisers for purposes of inflating property valuation.
- Requires OMLA registrants and licensees to follow the practices established by the Federal Fair Debt Collection Practices Act; and
- Establishes as a violation of the OMLA any conduct that is unfair, deceptive or unconscionable as set forth in the Ohio Consumer Sales Practices Act.

Increased Enforcement Authority/Penalties

- Expands DFI's regulatory enforcement authority in accordance with the SAFE Act and provides specific authority to take administrative enforcement actions based on violations of federal lending law.
- Establishes civil/administrative penalties of up to \$5,000 for unlicensed activity covered by the OMLA.
- Clarifies the authority to share information within the Ohio Department of Commerce and other financial institution regulators.

Clarifying Language Incorporated in the OMLA

- Provides specifically that non-real estate loans greater than \$5,000 require a registration under the OMLA.
- Clarifies the application of the OMLA to loans originated across state lines. If the borrower travels out of state to apply for a loan and also to receive the loan proceeds, the loan may be covered by other than Ohio law.
- Specifically addresses the application of certain fee limitations to loans that continue to be owned and/or serviced by former OMLA registrants.

- Extends a lenders liability to borrowers for interest rates and fees charged in excess of those permitted under the OMLA and continues those obligations after transfer of the loan to a holder in due course.

Timing for Compliance with the SAFE Act/Effective Date

- Ohio's SAFE Act takes effect on January 1, 2010.
- Current OMBA registrants and licensees must be SAFE compliant at the time of their next renewal in April 2010. Entities seeking an OMBA approved exemption and previously exempt loan originators in their employ must be in compliance by April 30, 2010.
- Current OMLA registrants must be SAFE compliant at the time of their next renewal in June 2010. To allow sufficient processing time for the anticipated volume of new mortgage loan originator license applications, OMLA mortgage loan originators will be able to operate via a safe harbor until December 31, 2010.³

THE DIVISION CANNOT PROVIDE LEGAL ADVICE TO THE PUBLIC OR TO ITS REGISTRANTS OR LICENSEES. FOR LEGAL ADVICE SPECIFIC TO YOUR SITUATION, WE RECOMMEND THAT YOU SEEK LEGAL COUNSEL FROM AN ATTORNEY FAMILIAR WITH YOUR SPECIFIC BUSINESS MODEL AS WELL AS, THE REQUIREMENTS OF THE OHIO MORTGAGE BROKER ACT (ORC 1322) AND OHIO MORTGAGE LOAN ACT (ORC 1321.51 – 1321.60).

³ This implementation language is based on a legislative proposal endorsed by the Ohio Department of Commerce Division of Financial Institutions but which has not yet been passed by the Ohio General Assembly or signed into law by the Governor.