

SAFE Act General Overview¹

The Consumer Financial Protection Bureau's (Bureau) SAFE Act rule² requires an individual who acts as a residential mortgage loan originator (MLO) and is employed by a covered entity that is regulated by one of the Federal Financial Institutions Examination Council member agencies or the Farm Credit Administration to register with the Nationwide Mortgage Licensing System and Registry (Registry) and to obtain a unique identifier.³ Regarding entities supervised by the Federal Reserve, the SAFE Act rule applies to state member banks and their respective subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act, as amended (see 12 USC 1844); branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks); and commercial lending companies owned or controlled by foreign banks; and their employees who act as MLOs.

Covered entities are required to provide certain institution-specific information to the Registry to enable their individual MLO employees to complete their registrations. MLOs themselves must provide additional information, including: (a) the MLO's fingerprints for submission to the Federal Bureau of Investigation to perform a national criminal background check; and (b) information on the MLO's

employment history as well as information related to any relevant criminal, civil, administrative, or arbitration actions. Selected MLO personal information and identifying institution information is made available to consumers using the Registry's public website.

Additionally, covered entities must also make the unique identifiers of their registered MLOs available to consumers in a manner and method practicable for the institution. Likewise, 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, before acting as an MLO, and in any initial written communication from the MLO to the consumer.

The SAFE Act rule requires covered entities to adopt written policies and procedures to ensure that their MLO employees are registered and that their registration information, as reflected in the institution's records, is accurate. These policies and procedures should be appropriate to the nature, size, complexity, and scope of residential mortgage lending activities of each institution. Consistent with the policies and procedures required by the rule, covered entities should provide guidance and assistance to their MLOs regarding the applicability and requirements of the rule and should instruct their MLOs to direct any inquiries about the rule to appropriate institution staff. Additionally, the policies and procedures should address taking appropriate action, consistent with applicable federal law, including section 19 of the Federal Deposit Insurance Act (12 USC 1829), and implementing regulations with respect to the results of an MLO's criminal background check from the Registry.

Furthermore, the SAFE Act rule requires covered entities to conduct testing to review compliance with the rule. Institutions are required to independently test for compliance with the regulation at least annually. Such independent compliance activities may be conducted by an institution's internal audit function, compliance (or similar function), or an outside party.

1. Secure and Fair Enforcement for Mortgage Licensing Act; 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 (Pub. L. No. 111-203, 124 Stat. 1376) (Dodd-Frank Act).

2. See 12 CFR 1007 (Regulation G); 76 Fed. Reg. 78483 (December 19, 2011).

3. Under the SAFE Act, an individual is generally prohibited from engaging in the business of mortgage loan origination without first obtaining and maintaining a unique identifier and either a license and registration as a state-licensed MLO or a registration as a federally registered MLO. The SAFE Act rule generally exempts from registration requirements employees who engage in a *de minimis* level of mortgage loan origination activity. In particular, the rule does not apply to an employee of a covered entity who has never been registered through the Registry if, during the preceding 12 months, the employee acted as an MLO for five or fewer residential loans. Pursuant to the Dodd-Frank Act, the Bureau has responsibility for developing and maintaining the federal registration system and supervisory and enforcement authority for SAFE Act compliance for entities under the Bureau's jurisdiction. See Dodd-Frank Act sections 1025, 1061, and 1100.

SAFE Act

Examination Procedures for Depository Institutions

EXAMINATION OBJECTIVES

1. To determine whether the financial institution has adopted written policies and procedures designed to assure compliance with the SAFE Act regulation.
2. To determine whether the annual independent testing of the institution'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.

EXAMINATION PROCEDURES

1. Determine whether the financial institution, or any of its subsidiaries, employs one or more mortgage loan originators (MLOs). For those institutions without any MLOs, these examination procedures do not need to be completed.
2. Determine for those financial institutions with MLOs whether the institution has adopted written policies and procedures and conducts annual independent compliance tests to assure compliance with the SAFE Act regulation. If the institution 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. Review the financial institution's written policies and procedures and the annual independent compliance tests to determine whether the institution has taken appropriate steps to assure compliance with the SAFE Act that at a minimum
 - a. establish a process for identifying which employees of the financial institution are required to be registered MLOs;
 - b. require that all employees of the financial institution 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 section 105 of the SAFE Act regulation;
 - d. establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparisons with its own records;
 - e. establish procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;
 - f. provide for independent testing for compliance with the SAFE Act regulation conducted annually by institution personnel or by an outside party;
 - 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 financial institution's policies and procedures, including prohibiting such employees from acting as an MLO or other appropriate disciplinary actions;
 - 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 section 1829) and implementing records of these reports and actions taken with respect to applicable employees; and
 - i. establish procedures designed to ensure that any third party with which the institution 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.
4. Any significant deficiencies in the institution'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.