

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

Regulations H and K; Docket No. R-1622 and RIN 7100 AF-16

Registration of Mortgage Loan Originators

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing to repeal its regulations that incorporated the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act). Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws, including the S.A.F.E. Act, from the Board to the Bureau of Consumer Financial Protection (Bureau). In December 2011, the Bureau published an interim final rule, incorporating the S.A.F.E. Act into its Regulations G and H. In April 2016, the Bureau finalized the interim final rule. Accordingly, the Board is proposing to repeal its S.A.F.E. Act regulations.

DATES: Comments must be received on or before **[insert 60 days after publication in the Federal Register]**.

ADDRESSES: You may submit comments, identified by Docket No. R-1622 and RIN 7100 AF-16, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments will be made available on the Board's web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons or to remove personally identifiable information at the

commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Clinton Chen, Senior Attorney, (202) 452-3952, Justyna Bolter, Attorney, (202) 452-2686, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act)¹ mandates a nationwide licensing and registration system for residential mortgage loan originators. The S.A.F.E. Act requires residential mortgage loan originators employed by depository institutions, subsidiaries that are owned and controlled by a depository institution and regulated by a federal banking agency, and institutions regulated by the Farm Credit Administration (FCA) to register with the Nationwide Mortgage Licensing System and Registry, obtain a unique identifier, and maintain such registration. Originally, the federal registration requirements of the S.A.F.E. Act were implemented through a coordinated rulemaking of the federal banking agencies and the FCA, the agencies with authority over the federal registration requirements under the S.A.F.E. Act (the "federal registry agencies").² The Board incorporated the S.A.F.E. Act in its Regulation H, 12 CFR part 208, Subpart I, and Regulation K, 12 CFR 211.24(k).

¹ 12 U.S.C. 5101 *et seq.*

² 75 FR 44656 (July 28, 2010). The rules were promulgated by the Board; the Office of the Comptroller of the Currency (OCC); the Federal Deposit Insurance Corporation (FDIC); the Office of Thrift Supervision, Treasury (OTS); the FCA; and the National Credit Union Administration (NCUA).

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)³ amended a number of consumer financial protection laws, including the S.A.F.E. Act. The Dodd-Frank Act transferred rulemaking authority for the S.A.F.E. Act from the federal registry agencies to the Bureau of Consumer Financial Protection (Bureau), effective July 21, 2011.⁴ In connection with the transfer of rulemaking authority for the S.A.F.E. Act to the Bureau, the Bureau published an interim final rule to incorporate the S.A.F.E. Act into its own Regulations G and H, 12 CFR parts 1007 and 1008 (Bureau Interim Final Rule).⁵ In April 2016, the Bureau finalized the Bureau Interim Final Rule as part of a larger initiative of finalizing interim final rules.⁶ The Bureau’s regulations that incorporate the S.A.F.E. Act substantially duplicate the federal registry agencies’ coordinated rules and cover the entities that were previously subject to the other agencies’ rules. Consequently, the Board is publishing this proposal to repeal its regulations that originally incorporated the S.A.F.E. Act.

II. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (the “RFA”) (5 U.S.C. 601 *et seq.*) requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the proposed regulation. This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 in order for the Board to solicit comment on the effect of the proposal on small entities. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

³ Pub. L. 111-203, 124 Stat. 1376 (2010).

⁴ *See* Pub. L. 111-203, sections 1061 & 1100. The Dodd-Frank Act generally excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. Pub. L. 111-203, section 1029. The rulemaking authority retained by the Board under Section 1029 of the Dodd-Frank Act does not extend to residential mortgages. Thus, all rulemaking authority under the S.A.F.E. Act, which pertains only to mortgage loan originator registrations, was transferred to the Bureau.

⁵ 76 FR 78483 (Dec. 19, 2011).

⁶ 81 FR 25323 (April 28, 2016).

1. *Statement of the need for, and objectives of, the proposed rule.* Title X of the Dodd-Frank Act transferred rulemaking authority for the S.A.F.E. Act and other enumerated consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In December 2011, the Bureau issued an Interim Final Rule to incorporate the S.A.F.E. Act pursuant to the transfer of rulemaking authority. Although the Board retains authority to issue some consumer financial protection rules, all rulemaking authority under the S.A.F.E. Act concerning mortgage loan originator registration was transferred to the Bureau. Consequently, the Board is proposing to repeal its regulations that incorporated the S.A.F.E. Act.

2. *Small entities affected by the proposed rule.* Any entity that is currently covered by the S.A.F.E. Act is subject to the rules issued by the Bureau, located in 12 CFR part 1007 and 1008. Therefore the Board's repeal of its regulations that incorporated the S.A.F.E. Act would not affect any entity, including small entities.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would repeal parts of the Board's regulations that incorporated the S.A.F.E. Act, and would therefore not impose any recordkeeping, reporting, or compliance requirements on any entities.

4. *Other federal rules.* The Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed repeal of the Board's regulations that incorporated the S.A.F.E. Act.

5. *Significant alternatives to the proposed revisions.* The Board is not aware of any significant alternatives that would further minimize the impact on small entities of the proposed repeal, but solicits comment on this approach.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Federal Reserve by the Office of Management and Budget (OMB). The proposed rule contains no collections of information under the PRA. *See* 44 U.S.C. 3502(3). Accordingly, there is no paperwork burden associated with the proposed rule.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Consumer protection, Crime, Currency, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, 3353, and 3906-3909; 15 U.S.C. 78b, 781(b), 781(i), 780-4(c)(5), 78q, 78q-1, 78w, 1681s, 1681w, 6801 and 6805, 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104b, 4106, and 4128.

Subpart I – Registration of Residential Mortgage Loan Originators

2. Subpart I, §§ 208.101 – 105 and Appendix A are removed and reserved.

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

3. In § 211.24, paragraph (k) is removed.

By order of the Board of Governors of the Federal Reserve System, September 20, 2018.

Ann Misback (signed)

Ann Misback,
Secretary of the Board.