



**BOARD OF GOVERNORS**  
OF THE  
**FEDERAL RESERVE SYSTEM**

WASHINGTON, D.C. 20551

DIVISION OF BANKING  
SUPERVISION AND REGULATION

**SR 10-14**

**August 2, 2010**

**TO THE OFFICER IN CHARGE OF SUPERVISION AT EACH FEDERAL RESERVE BANK**

**SUBJECT: Implementation of Registration Requirements for Federal Mortgage Loan Originators**

On July 28, 2010, the Federal Financial Institutions Examination Council (FFIEC) member agencies<sup>1</sup> and the Farm Credit Administration (collectively, the agencies) jointly published rules implementing the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act).<sup>2</sup> Accordingly, implementing amendments to the Board's Regulation H are effective on October 1, 2010. S.A.F.E. Act requirements and implementation considerations are discussed briefly below. More detailed information is available in the *Federal Register* notice.<sup>3</sup>

### **Background**

The S.A.F.E. Act mandated nationwide licensing and/or registration for individuals who act as mortgage loan originators (MLOs). Under the S.A.F.E. Act, an individual generally is 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.

With regard to federal registration, the S.A.F.E. Act established registration requirements for an individual who acts as a residential MLO and is employed by a covered entity that is regulated by one of the agencies. The agencies are required to jointly develop and maintain a system for registering MLO employees of their regulated institutions with the Nationwide Mortgage Licensing System and Registry (the Registry).<sup>4</sup>

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<sup>1</sup> The FFIEC member agencies include the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration. The Chair of the State Liaison Committee also is a voting member of the FFIEC.

<sup>2</sup> The S.A.F.E. Act was enacted as Title V of the Housing and Economic Recovery Act of 2008.

<sup>3</sup> 75 FR 44656 (July 28, 2010). The interagency *Federal Register* notice may be found at <http://edocket.access.gpo.gov/2010/pdf/2010-18148.pdf>.

<sup>4</sup> The Registry is owned and operated by the State Regulatory Registry LLC, a subsidiary of the Conference of State Bank Supervisors that currently operates the Registry for state MLO licensure.

The S.A.F.E. Act imposes additional requirements upon MLOs who are not employees of agency-regulated institutions, including state licensure and testing requirements and character and fitness standards. In this regard, employees of bank holding companies and their nonbank subsidiaries who act as MLOs are subject to state licensure and associated state regulation.

## **Scope of the Rule**

The Board's rule applies to state member banks and certain bank subsidiaries and certain entities owned or controlled by a foreign banking organization and regulated by the Board (Board-regulated institutions)<sup>5</sup> and their employees who act as MLOs. The 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 Board-regulated institution 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 mortgage loans.

The rule's registration requirements apply only to MLOs. Employees engaged solely in modifying the terms of an existing residential mortgage loan to a borrower as part of the institution's loss mitigation efforts are not subject to federal registration requirements. Employees engaged solely in making underwriting decisions with respect to mortgage loans also are not required to comply with federal registration requirements because they do not meet the rule's definition of an MLO.

## **Registration Process**

Because the Registry's systems are being modified to accept federal registrants, the agencies will publicly announce at another time the date on which the Registry will commence accepting federal MLO registrations. Beginning on that date, the rule provides a 180-day initial registration period during which an MLO may continue to originate mortgage loans even if not registered. However, after the end of the initial registration period, employees of agency-regulated institutions will be prohibited from acting as MLOs unless they have appropriately registered and have obtained a unique identifier from the Registry. MLOs subject to the Board's rule should not attempt to register with the Registry before this period begins.

During the initial 180-day registration period, agency-regulated institutions and their MLOs must complete their registrations directly through the Registry, using its web-based system.<sup>6</sup> The Registry will provide assistance with the registration process, including access to its national call center, to agency-regulated institutions and their MLOs. Consistent with the policies and procedures required by the rule, agency-regulated institutions 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.

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<sup>5</sup> Specifically, the Board's rule applies to state member banks; their respective subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 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.

<sup>6</sup> See Nationwide Mortgage and Licensing System and Registry at: <http://mortgage.nationwidelicingsystem.org/fedreg/Pages/default.aspx>.

Before the initial 180-day registration period commences, the agencies in conjunction with the Registry plan to provide agency-regulated institutions additional web-based guidance in connection with information security, batch processing of registrations, fingerprint acquisition and handling, and other implementation information.

### **Registration Information**

Board-regulated institutions are required to provide limited 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 will be available to consumers using the Registry's public website.

### **Risk Management Policies and Procedures**

Board-regulated institutions should take the necessary steps to prepare for the registration of their MLO employees. In particular, these institutions must develop and implement required policies and procedures<sup>7</sup> to ensure that their MLO employees are registered and that their information, as reflected in institution records, is accurate. These policies and procedures should be appropriate for the nature, size, complexity, and scope of the mortgage lending activities of each Board-regulated institution. Moreover, they should address taking appropriate action with respect to the results of an MLO's criminal background check from the Registry.

Board-regulated institutions must also make the unique identifiers of their registered MLOs available to consumers in a manner and method practicable to the institution. In addition, Board-regulated institutions are expected to independently test for S.A.F.E. Act compliance at least annually. Such compliance activities may be conducted by an institution's internal audit function, independent compliance (or similar) function, or an external party. The agencies, in coordination with the Registry, expect to release further information to assist agency-regulated institutions and their MLOs with the registration process.

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<sup>7</sup> See 12 CFR Section 208.104.

Reserve Banks should distribute this letter to Board-regulated institutions and appropriate Reserve Bank staff. Questions about this regulation may be directed to Anne Zorc, Counsel, Legal Division, at (202) 452-3876; or Stanley Rediger, Supervisory Financial Analyst, Policy Implementation and Effectiveness, Division of Banking Supervision and Regulation, at (202) 452-2629.

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