

S.A.F.E Act

How SAFE makes us feel so insecure

Cracking the SAFE Act

Topics Covered:

- Background and Intent
- Federal Requirements and Review on the states
- Texas SAFE Act
- Timeline
- Licensing – Process and Cost



Background

- On July 30, 2008 the Secure and Fair Enforcement Mortgage Licensing (SAFE) Act was signed into law as part of the Housing and Economic Recovery Act (HERA).
- HERA passed by a Democratic Congress and was signed into law by President Bush.
- The SAFE Act was a direct reaction to the subprime and housing crisis.

Federal Legislative Intent

- The intent behind the law is to regulate mortgage brokers and mortgage loan originators.
- Congress wanted to regulate these industries in an effort to prevent abuses in these industries and head-off any future mortgage and housing crisis.

Federal Requirement on the states

- The federal SAFE Act mandated every state pass their own version of the SAFE Act
- Each state that passed its own SAFE Act in compliance with the federal SAFE Act would administer and enforce the law with the various state regulatory agencies.
- The federal SAFE Act requires state statutes to create a new license type - “mortgage loan originators” (MLO)
- In order to become a licensed MLO an individual must take a 20 hour education course, pass a test, and undergo civil, criminal and financial background checks

Federal Review Authority of States' Laws

- The Department of Housing and Urban Development (HUD) is responsible for reviewing and overseeing all of the various state laws to insure the state's law and administrative rules comply with the federal SAFE Act.
- In order for HUD to formally review a state's law, HUD must first adopt and pass its own SAFE Act administrative rules.
- Without administrative rules HUD cannot formally review any state's law.
- Currently, HUD has drafted proposed administrative rules
 - The public comment period ended March 5.
 - HUD received over 5,000 public comments.



Federal Review Authority of States' Laws

- Once all the comment letters are reviewed, HUD will begin drafting its final rule, followed by a posting of the final rule in the Federal Register.
- Only after HUD has final rules in place can they then begin formally reviewing every state law and administrative rules to determine if HUD believes the state's law and rules are in compliance with the federal law and rules.

Texas SAFE – HB 10



- During the 81st Legislative Session concluding last June, HB 10 was introduced by Representative Solomons.
- HB 10 was the Texas version of the SAFE Act.
- HB 10 passed the legislature and was signed into law on June 19, 2009.
 - However, the bill's effective date is not until July 31, 2010.

Texas Current Law



- Who must be licensed?
 - Any retailer and/or salesperson who sells a home and plans to receive some compensation relating to the financing aspect of selling the home from a lender
 - SPIFs, “points”, origination fees or bonuses etc.
 - Any retailer who receives more money on a home sale that is financed than they would have had someone walked in and purchase the home for cash
 - Any retailer who owner finances home sales must also get their MLO license before the end of this July.
- When must they be licensed?
 - Before July 31, 2010

Texas Current Law



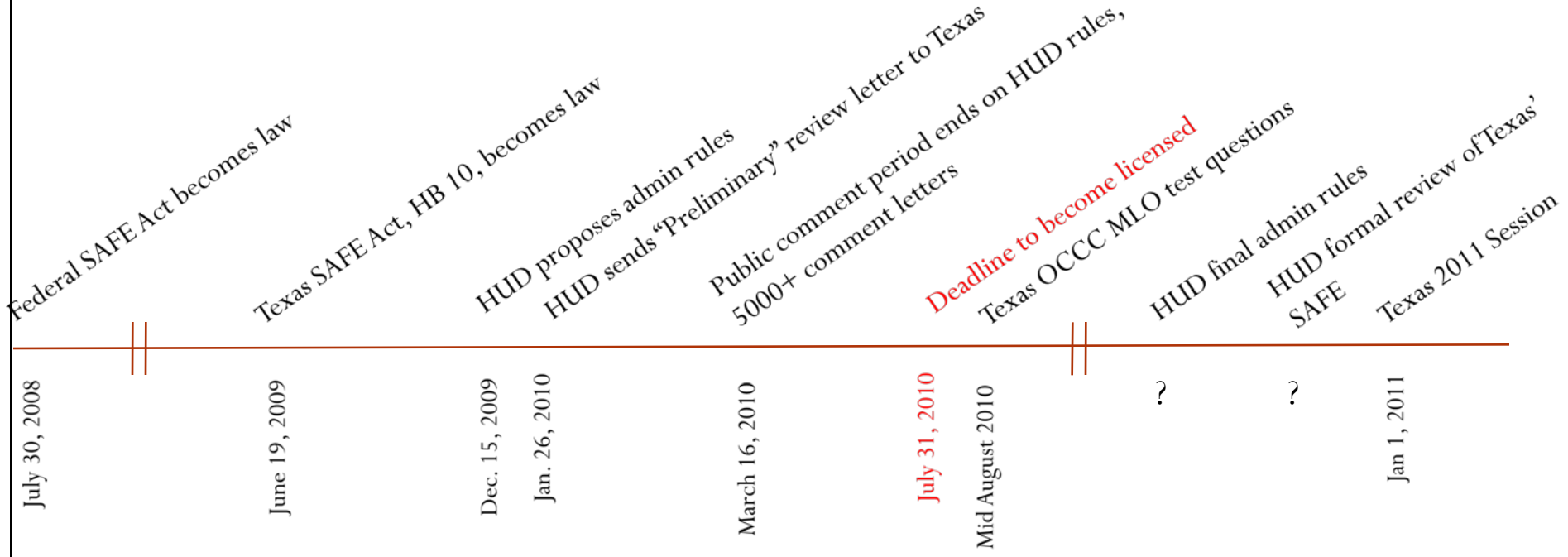
- Who does not need to be licensed?
 - Any retailers and/or salesperson who does not receive compensation related to the financing
 - Any retailer and/or salesperson who received the same amount on a financed transaction as they would have had the sale been a cash transaction
 - General administrative or clerical staff of a licensed MLO engaged in “clerical or support duties”
 - “Clerical and support duties” mean:
 - Following the receipt of an application from a consumer,
 - the receipt, collection, distribution, and analysis of information related to the processing or underwriting of a residential mortgage loan; and
 - communication with a consumer to obtain information necessary to process or underwrite a loan, to the extent that the communication does **not** include **offering** or **negotiating loan rates or terms** or **counseling** the consumer about residential mortgage loan rates or terms.



“Preliminary Review”

- January 26, 2010 HUD sent out “preliminary” review letters to all state banking regulatory agencies
- In the letter sent to Texas’ Commissioner Foster, HUD identified the specific provisions in the Texas law excluding retailers who do not receive compensation as it relates to the financing of home sales as non-compliant with the federal law.
 - These sections were identified as, “[appearing] to be inconsistent with , or at a minimum raise questions regarding compliance with, the SAFE Act.”
 - The letter also says the letter is, “not a determination of [Texas’] jurisdiction’s compliance with the minimum requirements of the SAFE Act.”
- The potential eventual result:
 - If HUD continues to support the position they took in their informal letter, then once they have final rules in place, and then formally review Texas’ law and reject the retailer exception sections, then those non-compliant sections will be struck from the law in Texas.
 - At which point every Texas retailer engaged in indirect financing through retail-installment-sales-contracts will have to get a MLO license.

Timeline



Makes perfect sense, right?



Initial License Requirements

- For an OCCC MLO license:
 - Complete an initial 20 hour class
 - At a minimum:
 - 3 hours of federal law,
 - 3 hours of ethics and
 - 2 hours on lending standards for nontraditional mortgages. This education can be achieved in a
 - Approved providers can be found at: <http://mortgage.nationwidelicencingsystem.org>
 - In person class room or online
 - Pass a two part test with a score of 75 percent or greater.
 - The test comprises of a National Component with 100 questions lasting three hours and a Unique State Component with 55-65 questions lasting two hours.
 - Apply and pay the licensee fee with the Office of Consumer Credit Commission with the Texas Finance Commission
 - <http://www.occc.state.tx.us/pages/industry/Mortgage/safe.html>
 - Pay the required Consumer Trust Fund Fee to the OCCC
 - Send Employer Verification Form to OCCC
 - <http://www.occc.state.tx.us/pages/industry/Mortgage/EmployerVerification-ADM98.pdf>
 - Register with the Nationwide Mortgage Licensing System (NMLS) as a MU4
 - <http://mortgage.nationwidelicencingsystem.org>
 - Submit fingerprints and consent to an F.B.I. criminal background check to the NMLS
 - Submit a personal history to NMLS including administrative, civil or criminal findings by any governmental jurisdiction and a credit report

Initial License Requirements Cont.

- Prospective licensees do not have to complete the education or testing requirements to file an application with the NMLS.
- The OCCC anticipates granting some type of conditional approval pending the completion of education/testing prior to the July 31 deadline

Initial License Cost Estimate

- Estimated Cost for an initial license:
 - Initial 20 class: providers cost range from \$280 - \$400
 - Pay to sit for the Test: \$161
 - National component: \$92
 - Texas component: \$69
 - Apply with the NMLS for a MU4 OCCC MLO license: \$300
 - Pay the required Consumer Trust Fund Fee to the OCCC: \$25
 - System fees with NMLS: TBD
 - Submit fingerprints to NMLS and consent to an F.B.I. background check to verify you have never been a felon: \$39-\$49
 - Submit an credit report check \$25 (estimated)
- Total Estimated Cost for Initial License: \$800 - \$1,000



Annual Renewal Requirements and Cost

- Annual renewal requirements and costs:
 - Renew with the NMLS for the OCCC MLO license: \$300
 - Pay the required Consumer Trust Fund Fee to the OCCC: \$25 (per currently proposed rule draft)
 - Complete 8 hours of annual continuing education: providers cost range from \$200 - \$375

Industry Questions on Texas SAFE

- Direct questions to: licensing@sml.state.tx.us
- OCCC website:
<http://www.occc.state.tx.us/pages/industry/Mortgage/safe.html>
- OCCC contact page:
<http://www.occc.state.tx.us/pages/agency/Index8.html>

Questions?