

S.A.F.E. Act :

**The Secure and Fair Enforcement for
Mortgage Licensing Act of 2008**

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What is the S.A.F.E. Act?

Enacted on July 30, 2008, and mandates a nationwide licensing and registration system for residential mortgage loan originators (MLOs).



Overarching Requirements:

- For individuals who are employees of covered financial institution, registration as a registered mortgage loan originator and a unique identifier (federal registration), or
- For all other individuals, a state license and registration as a state-licensed mortgage loan originator, and a unique identifier (state licensing/registration)



Objectives:

- aggregating and improving the flow of information to and between regulators;
- providing increased accountability and tracking of MLOs;
- enhancing consumer protections;
- supporting anti-fraud measures; and
- providing consumers with easily accessible information at no charge regarding the employment history of and publicly adjudicated disciplinary and enforcement actions against MLOs



Why should we care?

- First and foremost: member-oriented organizations.
- Winning, isn't.



- Office of the Comptroller of the Currency (OCC)
- Board of Governors of the Federal Reserve System (Board)
- Federal Deposit Insurance Corporation (FDIC)
- Office of Thrift Supervision (OTS)
- National Credit Union Administration (NCUA)
- Farm Credit Administration (FCA) and through the Federal Financial Institutions Examination Council (FFIEC)



Who is covered under the S.A.F.E. Act?

- All credit unions (both federally and privately insured) and their employees who are mortgage loan originators (MLOs) making residential mortgage loans. These include:
 - First mortgages
 - Second mortgages
 - Home Equity Lines of Credit (HELOCs)
 - Refinanced loans
 - Reverse mortgages
 - Land purchased for the construction of a residence



NCUA lost authority for the SAFE Act **on July 21, 2011** when regulatory authority transferred to the CFPB and the [technical amendments](#) add cross-references to the CFPB's regulations which credit unions must follow.

Here is from the final rule:

"In 2010, President Obama signed into law the Dodd-Frank Act. The Dodd-Frank Act substantially changed the federal legal framework with respect to consumer financial protection regulation. Among the many changes, title X of the Dodd-Frank Act transferred to the CFPB NCUA's rulemaking authority under the Gramm-Leach-Bliley Act and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

...

To assist federally insured credit unions, the rescinded parts of NCUA's regulations will retain their original heading and be amended to include a cross citation to the CFPB's republished version of the regulation."



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Privately insured institutions (PICUs)

- Only be allowed to register under the federal system if NCUA has a specific Memorandum of Understanding for the SAFE Act with the applicable state regulatory authority. Otherwise, the state-licensing system will apply.



What is an MLO?

- An individual who both:
 - Takes a residential mortgage loan application;
and
 - Offers or negotiates terms of a residential mortgage loan for compensation or gain.



Not an MLO:

- An individual who performs only administrative or clerical tasks
- Certain individuals who perform real estate brokerage activities (as described in the S.A.F.E. Act and regulation)
- Individuals who are involved in the extension of credit related solely to time share plans



Polling question: Examples of MLO or not?

[https://www.law.cornell.edu/cfr/text/12/appendix-A to part 1007](https://www.law.cornell.edu/cfr/text/12/appendix-A%20to%20part%201007)



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Duties for credit unions:

- Develop policies and procedures
- Ensure MLOs are properly registered and prohibit any employee who is not registered from performing MLO duties
- Ensure information is updated in the Registry when certain events occur including a change in the MLO's name or employment status (i.e. separation/termination), etc.
- Provide other information to the Registry as outlined in section 761.103(d)(3)(e)(1)(i). This includes basic information regarding the credit union (name address, etc.) and authorized Registry users. Credit unions have 30 days to update this information should it become inaccurate or outdated. **This information must be renewed annually.**



Policies and Procedures

All credit unions originating any residential mortgage loans also will have to adopt, and employees will have to follow, written policies and procedures designed to ensure compliance with the rule. This includes credit unions that currently have MLOs who fall under the de minimus exception. These policies and procedures were required by October 1, 2010. **Section 706.104 outlines specific items that must be addressed.**



What is to be done?

- Make sure your actual practices agree with your written policies and disclosures!
 - Internal audit for compliance with policies
- Track and monitor member complaints, even informal ones, for trends



MLOs must:

- Provide basic information [outlined in section 761.103(d)(1)] to the Registry or ensure that the credit union is performing this function
- Obtain a unique MLO identifier (which cannot be used for any other purpose) from the Registry
- Maintain a current registration as long as MLO duties are being performed (Annual renewal dates will be from November 1 to December 31 of each year.)
- Make certain that the Registry is updated if certain events occur (name change, information becomes outdated, etc.)
- Authorize the Registry to obtain information related to certain legal administrative actions.
- Attest to the accuracy of all information provided to the Registry whether submitted by the MLO or the credit union.

Authorize the Registry to make certain information available to the public.



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De minimus exception:

- Registration requirements do not apply to any employee of a credit union who has never been registered or licensed through the Registry as an MLO if during the past 12 months the employee acted as an MLO for five or fewer residential mortgage loans.



Volunteers who perform MLO duties:

- Credit union employees, including volunteers, who originate more than five residential mortgage loans in the prior 12 months (i.e., those who fall outside the *de minimus* exception), will have to register with the Registry to obtain a unique identifier and maintain the registration for as long as they perform MLO duties.
- These volunteers must also follow all other requirements set forth for MLOs under the regulation.



Information MLOs must provide:

- Identifying information, including name, home address, social security number, gender, date of birth, and principal business location;
- Financial-services-related employment history for the prior 10 years;
- Disclosure of specified criminal, civil, judicial, or state, federal, or foreign financial authority regulatory actions against the employee; and
- Fingerprints, for purposes of a Federal Bureau of Investigation background check.
- The employee must attest to the correctness of the information submitted to the Registry; must authorize the Registry and the institution to obtain information related to any administrative, civil, or criminal action to which the employee is a party; and must authorize the Registry to make certain information available to the public.



Credit Committees:

- At least one individual from the committee will be required to register under the system and obtain a unique identifier and maintain the registration if the committee engages in MLO activities.
- This individual must follow all other requirements set forth for MLOs under the regulation. *De minimus* exception applies.



CUSOs

- NCUA does not have direct regulatory oversight or enforcement authority.
- NCUA has not, historically, asserted that CUSOs or their employees are exempt from applicable state licensing regimes and the SAFE Mortgage Licensing Act does not alter that approach. Individuals employed by CUSOs that engage in loan origination activities, whether the CUSO is owned by a state or a federal credit union, would need to be licensed in accordance with applicable state requirements.

