

Secure and Fair Enforcement for Mortgage Licensing Act

Report to Congress

July 2009

DEPARTMENT
OF
HOUSING
AND
URBAN
DEVELOPMENT

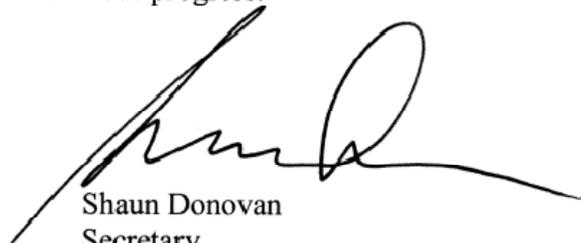


I am pleased to present the 2009 Report to Congress on the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). This comprehensive report provides an overview of the SAFE Act, discusses the implementation process, provides a status report on the nationwide licensing and registration system mandated by the Act, and suggests legislative recommendations for improving the effectiveness of the statute. Specifically, the report details efforts being undertaken by the Department of Housing and Urban Development, in partnership with States, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR), to set up systems to reduce fraud and enhance consumer protections pursuant to the SAFE Act.

The turmoil in the housing market over the last few years has had a devastating impact on millions of homeowners, neighborhoods from coast to coast, and the Nation's overall economy. In response to the crisis, the Administration has developed and is implementing a number of initiatives to help our housing market and economy recover, as well as working to insure that common sense consumer protections are put in place to prevent future borrowers from being vulnerable to fraudulent loan products or to aggressive marketing of loan products that are not in their interest.

Successful implementation of the SAFE Act is a key component of the Administration and HUD's overall efforts to improve consumer protections in the mortgage market. In the midst of the foreclosure crisis, which can be traced in large part to lax oversight and regulation of many mortgage loan originators, the SAFE Act represents a vital step in returning integrity and accountability to the residential mortgage loan market by introducing nationwide standards of uniform licensing and registration for mortgage loan originators in the United States.

I sincerely believe that HUD's SAFE Act program represents a critical addition to our system of regulatory protections that will benefit consumers and financial institutions alike. I look forward to keeping Congress apprised of our progress.

A handwritten signature in black ink, appearing to read 'Shaun Donovan', is written over a horizontal line.

Shaun Donovan
Secretary
U.S. Department of Housing
and Urban Development

Executive Summary

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) was signed into law July 30, 2008 as part of the Housing and Economic Recovery Act of 2008 (HERA). The SAFE Act is a partial response to the mortgage crisis that was brought about by, among other things, a lack of appropriate monitoring, oversight and regulation of the intermediaries between consumers and lenders in the residential mortgage industry; i.e., mortgage loan originators.

What the SAFE Act attempts to achieve:

The SAFE Act is intended to enhance consumer protection and reduce fraud by requiring that all mortgage loan originators be either licensed and registered by their state or, if supervised by the federal banking agencies, be registered. The licensing requirements include testing, pre-licensure and continuing education, and criminal background checks, all of which are designed to increase integrity in the residential mortgage market.

HUD's responsibilities under SAFE:

The overall responsibility for interpretation and enforcement of the SAFE Act resides with HUD. However, each state is responsible for enacting statutes or adopting regulations for licensing residential mortgage loan originators that meet the minimum standards specified in the SAFE Act. If a state fails to do so, or is found later to have abrogated its enforcement of those statutes or regulations, HUD must then establish and operate a licensing and regulatory program for that state. HUD is responsible for reviewing and approving each state's SAFE statute or regulation, and for regularly monitoring the states for compliance.

Implementation Update:

HUD has worked closely with the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to encourage and assist each state and territory to enact SAFE compliant legislation or regulations by the July 31, 2009 deadline set by Congress. Following enactment of the SAFE Act, CSBS and AARMR worked closely with state and industry representatives to develop model state legislation (MSL), which HUD subsequently reviewed and found to meet the minimum requirements of the Act. HUD published a January 2009 Commentary to notify states of its finding on the MSL and to present HUD's interpretations of certain statutory provisions of the SAFE Act that required clarifying analysis. More recently, HUD published a list of Frequently Asked Questions and Answers (FAQs) intended to present HUD's view of certain SAFE Act requirements in light of the approaching deadline for states to comply with the Act's requirements. The publication of both the Commentary and the FAQs were developed following discussions with numerous federal banking regulators, as well as both industry trade groups and state government representatives.

As of June 30, 2009, 43 states and the District of Columbia have passed bills designed to bring their states into compliance with the SAFE Act. HUD is authorized to grant an extension of up to 24 months if a state fails to comply with the Act's minimum requirements, but HUD determines that the state has made a good faith effort to enact a SAFE compliant law or regulation.

The SAFE Act encourages CSBS and AARMR to establish a nationwide mortgage licensing system and registry (NMLSR). In fact, CSBS and AARMR established the State Regulatory Registry LLC in 2006, which in turn owns and operates the Nationwide Mortgage Licensing System (NMLS). Although not yet fully compliant with all the requirements of the SAFE Act, the NMLS is completely operational and allows state-licensed mortgage lenders, brokers, and loan officers to apply for, amend, update and renew loan originator licenses online in participating states using a single set of uniform applications. In addition to assigning unique identifiers to each individual loan originator, NMLS functionality will include electronic fingerprint capture and routing to law enforcement, receipt of criminal background checks, and the ability to obtain individual credit reports on each licensee. Currently, 26 states are using the NMLS to license loan originators under state laws passed prior to the SAFE Act.

While HUD's efforts have been focused on state compliance with the SAFE Act, the federal banking agencies recently (June 9, 2009) issued a joint notice of proposed rulemaking on the registration requirements for mortgage loan originators employed by federally regulated institutions. Although education and testing requirements for these mortgage loan originators are not included in the SAFE Act, registration and maintenance of that registration are prescribed in that law. It is anticipated that modifications to the NMLS will be made in the near future to allow for registration from mortgage loan originators employed by federally regulated depositories.

HUD is also engaged in establishing an office within the Office of Regulatory Affairs and Manufactured Housing that would be solely devoted to SAFE Act monitoring and evaluation. In addition to sufficient staff to determine state compliance, HUD will need to procure contracts to carry out its statutory responsibilities.

Unresolved Issues:

The SAFE Act was enacted without any appropriations from Congress nor any mechanism to raise funds from fees charged to licensed mortgage originators. The lack of funding may prove problematic if HUD, due to a state's refusal to license loan originators or failure to meet the minimum requirements of the Act, must take over that state's licensing, testing, education, and supervisory requirements. Another concern that may need Congressional action are responsibilities for submission of mortgage "call reports" that normally is a function performed by the employer of a mortgage loan originator, not the employee. Since enactment by states of SAFE act compliant legislation is recent and ongoing, and HUD's enforcement responsibilities will not be called upon until after July 30, 2009, unresolved issues may surface as the remaining states enact SAFE Act compliant legislation and HUD commences its oversight and enforcement responsibilities.

ACKNOWLEDGEMENTS

This report was prepared by staff from U.S. Department of Housing and Urban Development's (HUD) Office of Regulatory Affairs and Manufactured Housing, and Office of Legislation and Regulations. In preparing this report, staff benefitted from the contributions of many experts on the SAFE Act, including staff of the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. However, HUD is solely responsible for any opinions expressed within this report.

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Total number of state regulators trained on use of NMLS as of June 30, 2009. 20

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Introduction

The Housing and Economic Recovery Act of 2008, signed into law on July 30, 2008 (Public Law 110-289) (HERA), is important new housing legislation intended to help revitalize America's residential housing market. HERA includes modernization of the Federal Housing Administration, foreclosure prevention, and consumer protection enhancements. The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) is a key component of HERA.

The SAFE Act is intended to enhance consumer protection and reduce fraud by encouraging states to establish compliant programs for the licensing and registration of state-supervised mortgage loan originators. The SAFE Act also encourages the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a Nationwide Mortgage Licensing System and Registry (NMLSR). This registry is to be used for all American mortgage loan originators, both those supervised by the states and those supervised by the federal banking agencies. Administrative authority for the SAFE Act lies with HUD, which must either approve each state's licensing and registration program or establish a HUD-operated program in that state. HUD must also operate the NMLSR if CSBS and AARMR fail to meet the requirements of the SAFE Act.

By its own terms, the SAFE Act is intended to establish a uniform license application and reporting requirement for state-licensed loan originators as well as a comprehensive licensing and supervisory database, the NMLSR. The NMLSR is intended to improve the flow of information to and between regulators and provide increased accountability and tracking of loan originators. It is also intended that the NMLSR will provide consumers with easily accessible information regarding the employment and disciplinary histories of loan originators. In sum, the intention of the Act is to establish a means to ensure that residential mortgage loan originators will act in the best interests of the consumer and otherwise promote responsible behavior in the residential mortgage market.

The new standards, as well as the uniformity and consistency of such standards, directed to be established nationwide present a significant step in increasing integrity in the residential mortgage loan market, enhancing consumer protections, and reducing fraud. The timeline for implementing these standards nationwide is also ambitious given that such standards must be adopted into law by each of the 50 states. The SAFE Act requires states to be in compliance with the new requirements by July 31, 2009, for states whose legislatures meet annually and by July 31, 2010, for states whose legislatures meet biennially. HUD may extend the deadline to be in compliance for up to 24 months on evidence that a state is making a good faith effort to adopt and implement the new mortgage licensing requirements.

On January 2, 2008, prior to the enactment of the SAFE Act, CSBS and AARMR launched the Nationwide Mortgage Licensing System (NMLS).¹ This system is currently being adapted to function as the single NMLSR required by the SAFE Act. HUD is closely monitoring the adaptation process. HUD feels confident that the NMLS will be fully compliant with the requirements of the SAFE Act within the next year based on the Department's review of the system's current capabilities and strong assurances from both CSBS and AARMR.

Overview of the Report

This is the first report to Congress since the passage of the SAFE Act. It was written with help from CSBS, AARMR, and the State Regulatory Registry (SRR), who provided the Department with documentation included in this report. Chapter 1 provides an overview of the SAFE Act's requirements. Chapter 2 provides an overview of implementation process and HUD's strategic plan for carrying out the mandates of the Act. Chapter 3 is a status report, provided through facts and figures, on where states and the NMLS are in the process of carrying out the mandates of the Act and information on current licensing activity being carried out by the NMLS. Finally, Chapter 4 provides a list of outstanding issues and legislative recommendations that HUD believes could improve the effectiveness of the SAFE Act's provisions going forward.

Background

The extent of the housing and economic crisis is now painfully apparent. According to Mortgage Bankers Association (MBA) data, approximately 3.7 million borrowers began the foreclosure process in 2007 and 2008; more than 1.4 million additional households were more than 90 days delinquent on their mortgage at the end of 2008. An estimated 4 million households have mortgages that exceed the value of their homes and unemployment rates have been rising. Beyond the effects on household stability and wealth, falling home values and illiquid assets represent a significant drag on consumer spending and the economy as a whole, starting with the large housing sector. One thing is clear, a lack of appropriate monitoring, oversight and regulation in the residential mortgage industry has had a devastating effect on the U.S. economy.²

The residential mortgage industry has changed dramatically over the past two decades. Twenty years ago, federal- and state-regulated savings and loans originated the majority of residential mortgages. Federal government sponsored enterprises such as Fannie Mae and

¹ www.stateregulatoryregistry.org/NMLS.

² For additional information on the causes of the foreclosure crisis see, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, INTERIM REPORT TO CONGRESS ON THE ROOT CAUSES OF THE FORECLOSURE CRISIS (March 2009), http://www.huduser.org/Publications/PDF/int_Foreclosure_rpt_congress.pdf; see also, U.S. DEPARTMENT OF TREASURY, FINANCIAL REGULATORY REFORM: A NEW FOUNDATION: REBUILDING FINANCIAL SUPERVISION AND REGULATION (2009), http://www.financialstability.gov/docs/regs/FinalReport_web.pdf.

Freddie Mac held a significant percentage of the secondary market share and effectively set standards for the industry. At the time, the “standard” mortgage was a 15- or 30-year fixed-rate mortgage.

By 2000, however, the mortgage markets had changed significantly. Savings and loans, traditional depository institutions, and Fannie Mae and Freddie Mac no longer dominated the market. Product choices for consumers exploded. Mortgage loans were available in practically any combination of fixed, adjustable, or hybrid adjustable rate and amortizing, non-amortizing, or negatively amortizing mortgages, with terms ranging anywhere from two years to 50 years. Loan documentation requirements and underwriting standards also became less stringent. By 2007, well over sixty percent of mortgages were originated by third-party originators. In addition to these changes, risk-based pricing allowed more consumers than ever to qualify for home financing by trading a lower credit score or down payment for a higher rate.

Further, the volume of loan originations also increase exponentially over this time period from \$500 billion in the early 1990s to a peak of \$3.8 trillion in 2003.³ This increase in loan volume was facilitated in part by advances in technology such as automated underwriting systems, the increase of mortgage products available to the consumer, the development of the subprime market, and an expansion of the secondary market for mortgage securities to include international investors, hedge funds, and private equity funds. This new originate-to-distribute securitization model soon dominated the nation’s residential mortgage market.

Since the collapse of the savings and loan industry and the evolution of the originate-to-distribute securitization model, states have filled regulatory gaps in the system in order to protect consumers and oversee the origination process of residential mortgage loans. State regulators frequently have the benefit of “real-time” information about emerging consumer and lending issues, and, in the case of the mortgage industry, the states saw the need to address certain practices and products. This was initially accomplished through the licensing and supervision of mortgage companies and professionals and anti-predatory lending laws and regulations. All fifty states and the District of Columbia currently regulate mortgage companies and/or mortgage professionals – a dramatic change from 1993, when only 18 states regulated the nonbank mortgage industry. Similarly, in 1999, North Carolina enacted the first anti-predatory lending law. As the mortgage industry continued its rapid expansion, so too did the efforts of the states to address what they saw as the problems fueling and emerging from this expansion. As of March 2009, the number of states with subprime and predatory lending laws has risen to 35, plus the District of Columbia.

CSBS and AARMR also recognized the need for greater uniformity and coordination among regulatory agencies to supervise multi-state companies, track unscrupulous professionals in the industry, and establish a single nationwide mortgage licensing system and registry to address this need. Creating the NMLSR was central to ongoing state efforts to drive uniformity,

³ Source: Mortgage Bankers Association, <http://www.mba.org>.

increase consumer protection and enhance supervision. Congress recognized the utility and importance of such a system in 2008 and passed the SAFE Act to protect consumers, combat fraud and help promote uniformity among the states.

The Administration recognizes the important role states play in protecting consumers and fighting fraud and is working to bring stability back to the residential mortgage market. HUD is now playing a central role in efforts to stabilize mortgage and housing markets, curb mortgage abuses and predatory market activity and provide assistance to households and communities hit by the current turmoil. The SAFE Act is a central part of HUD's efforts to curb mortgage abuses and predatory market activity.

Chapter 1: Overview of the SAFE Act

The SAFE Act⁴ was signed into law on July 30, 2008, as part of the Housing and Economic Recovery Act of 2008. The SAFE Act encourages states⁵ to adopt licensing and registration requirements for loan originators that meet the minimum standards specified in the Act. HUD must establish and maintain the licensing system for residential mortgage loan originators in those states that do not adopt such requirements. Under the Act, individuals are prohibited from engaging in the business of a loan originator without first obtaining a unique identifier and maintaining annually, either (1) a registration for a federally regulated originator; or (2) a license *and* registration for a state-licensed loan originator.

The Act also encourages the CSBS⁶ and AARMR⁷ to establish a NMLSR⁸ for the residential mortgage industry for the purpose of achieving the following objectives:

- Providing uniform license applications and reporting requirements for state licensed-loan originators;
- Providing a comprehensive licensing and supervisory database;
- Aggregating and improving the flow of information to and between regulators;
- Providing increased accountability and tracking of loan originators;
- Streamlining the licensing process and reducing regulatory burden;
- Enhancing consumer protections and supporting anti-fraud measures;
- Providing consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators;
- Establishing a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer;
- Facilitating responsible behavior in the subprime mortgage market place and providing comprehensive training and examination requirements related to mortgage lending; and

⁴ The SAFE Act was enacted as part of the Housing and Economic Recovery Act of 2008, Pub. L. 110-289, Division A, Title V, §§ 1501-1517, 122 Stat. 2654, 2810-2824 (July 30, 2008), codified at 12 U.S.C. 5101-5116.

⁵ Under the SAFE Act, “the term ‘state’ means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.”

⁶ CSBS is the nationwide organization for state banking, representing the bank regulators of the 50 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands, and approximately 6,200 state-chartered financial institutions. The Conference is responsible for defending state authority to determine banking structure and the products and services state-chartered institutions can offer and for improving the quality of state bank supervision by providing department performance evaluation and accreditation programs and supervisory education/training programs for state department personnel.

⁷ AARMR is the national organization representing state residential mortgage regulators. AARMR’s mission is to promote the exchange of information between and among the executives and employees of the various states who are charged with the responsibility for the administration and regulation of residential mortgage lending, servicing and brokering.

⁸ www.stateregulatoryregistry.org/NMLS.

- Facilitating the collection and disbursement of consumer complaints on behalf of state mortgage regulators.

These new standardized requirements benefit the entire residential mortgage industry by creating a single nationwide licensing system for all mortgage loan originators that brings uniformity and consistency to state licensing standards and reporting requirements, and drastically reduces the regulatory burdens presented by different overlapping state systems. Moreover, the SAFE Act has eliminated many of the arbitrary title based distinctions between individuals performing functionally equivalent activities through the creation of a clear two part test for determining whether an individual is a loan originator.⁹ Thus, individuals engaging in predatory activities may no longer elude detection and licensing requirements by simply moving their operations into an unregulated or under-regulated line of business.

Loan originators are the frontline intermediaries between institutional lenders and consumers, often responsible for facilitating the single largest purchase many Americans make in their lifetimes, the purchase of a home. The SAFE Act recognizes this fact and establishes professional licensing requirements for all state-licensed loan originators that correspond with the important role originators play in today's economy. Under the SAFE Act, originators are now treated more like securities brokers, lawyers, and certified public accountants. Through standardized testing, education, and character and fitness requirements, the Act will increase integrity in the residential mortgage loan market, enhance consumer protections, and help track and prevent systemic residential mortgage fraud.

HUD strongly supports and is fully committed to the consumer protection goals of the SAFE Act, and to ensuring the program's continued operation and success.

The NMLSR¹⁰

The SAFE Act encourages CSBS and AARMR to establish and maintain a NMLSR as a central repository for information on all state and federally regulated residential mortgage loan originators operating in the United States. The Act outlines specific requirements for the NMLSR, including:

- Establishing protocols for the issuance of unique identifiers;
- Receiving and processing fingerprints for national and state criminal history background checks for all loan originators;
- Developing and administering a qualified written test and approving test providers;

⁹ The SAFE Act defines "loan originator" as "an individual who - (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain. . . ."

¹⁰ The NMLSR can be found at www.stateregulatoryregistry.org/NMLS.

- Reviewing and approving pre-licensure and continuing education courses;
- Developing a standardized mortgage call report;
- Providing public access to licensing information; and
- Collecting and distributing federal and state consumer complaints.

State-Licensed Loan Originators

The SAFE Act encourages states to participate in the NMLSR and requires participating states to have in place, by law or regulation, a system for licensing and registering loan originators that meets the requirements of sections 1505, 1506, and 1508(d) of the SAFE Act. The SAFE Act requires participating states to have the licensing and registration rules in place by: (1) July 31, 2009, for states whose legislatures meet annually; and (2) July 31, 2010, for states whose legislatures meet biennially. Under the SAFE Act, HUD is authorized to grant an extension of up to 24 months if HUD determines that a state is making a good faith effort to establish a state licensing law that meets the minimum requirements of the Act.

In January of 2009, HUD issued commentary (HUD Commentary or Commentary)¹¹ that provided participating states time to actually implement their licensing programs beyond the July 31, 2009 deadline for passing SAFE compliant legislation. Specifically, the Commentary allows states to give all individuals until July 31, 2010 to obtain a loan originator license, and all individuals who already hold loan originator licenses issued under a prior licensing system until December 31, 2010 to obtain a SAFE compliant license. The Department believes that this implementation schedule will help ensure a smooth and orderly transition onto the new nationwide licensing system, and to avoid unnecessary disruption to the residential mortgage market.

HUD also recently issued a list of Frequently Asked Questions and Answers (FAQs) that address a number of detailed questions being raised by state regulators and various industry groups. The answers are intended to assist states in drafting laws or regulations to comply with the minimum requirements of the SAFE Act. A complete copy of the FAQs can be found in appendix B.

In implementing the minimum requirements of the SAFE Act, participating states are required to provide “effective supervision and enforcement” of their licensing programs. This includes sufficient authority and resources to review and approve license applications, suspend or terminate licenses for a violation of state or federal law, report enforcement actions to the NMLSR, and otherwise enforce the minimum requirements set forth in the SAFE Act. Thus, states must provide for an effective system of supervision and enforcement in addition to establishing a licensing system to be fully compliant with the SAFE Act’s minimum requirements.

¹¹ See appendix A.

Moreover, in addition to statutory education and testing requirements, and a statutory bar for certain felony convictions, the SAFE Act requires that participating states find that each applicant has demonstrated financial responsibility, character, and general fitness prior to issuing or renewing any loan originator's license.¹² This general character and fitness requirement corresponds with the significant deference and respect often given by consumers to the advice of loan originators.

When used in conjunction with the information provided by the NMLS, these requirements obligate state regulators to use this authority by drawing upon background checks and taking other actions to identify and prevent fraudulent, abusive, and incompetent state-licensed originators from harming consumers and financial institutions.

Registered Loan Originators

The SAFE Act directs the federal banking agencies,¹³ through the Federal Financial Institutions Examination Council (FFIEC), and the Farm Credit Administration (FCA) to jointly develop and maintain a federal registration system for loan originators who are employees of federally-regulated institutions. The SAFE Act requires both federal registration, and state licensing and registration be performed through the NMLSR. In connection with this registration, the federal banking agencies must, at a minimum, furnish or cause to be furnished to the NMLSR information concerning the mortgage loan originator's identity, including: (1) fingerprints for submission to the Federal Bureau of Investigation (FBI) and any other relevant governmental agency for a state and national criminal background check; and (2) personal history and experience, including authorization for the Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction. Presumably because of their supervision by the federal banking agencies, these "registered loan originators"¹⁴ are not subject to the licensing, education, character and fitness, or minimum competency requirements that the SAFE Act requires of state-licensed loan originators.

¹² SAFE Mortgage Licensing Act, 12 U.S.C. § 5104(b)(3).

¹³ The term "federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

¹⁴ The SAFE Act defines the term "registered loan originator" as "any individual who -

(A) meets the definition of loan originator and is an employee of -

(i) a depository institution;

(ii) a subsidiary that is -

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal Banking agency; or

(ii) an institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the NMLSR.

HUD Responsibilities

In general, the responsibility for interpretation and enforcement of the SAFE Act rests with HUD. This responsibility requires that HUD first take an active role in the national implementation process and then perform continuous monitoring of participating states and the NMLSR to ensure the SAFE Act's requirements continue to be met. To carry out these ongoing responsibilities HUD will establish a SAFE Act program office, employ a dedicated staff, and procure the contract resources necessary for monitoring participating states and operating licensing programs in nonparticipating states.

HUD is charged by the SAFE Act with establishing and maintaining a mortgage loan originator licensing and registration program for any state or territory that does not have in place a process for licensing and supervising loan originators that meets the requirements of the SAFE Act, or that fails to participate in the NMLSR. Specifically, section 1508 of the SAFE Act, entitled "Secretary of Housing and Urban Development Backup Authority to Establish a Loan Originator Licensing System" provides that after the time periods for compliance allowed by the statute, if the "Secretary determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the requirements of sections 1505 and 1506 and subsection (d) of [section 1508], or does not participate in the Nationwide Mortgage Licensing System and Registry, the Secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the Secretary of loan originators operating in such State as State-licensed loan originators." Additionally, if HUD determines that CSBS and AARMR have failed to develop or maintain a NMLSR that meets the minimum requirements of the SAFE Act, HUD must establish a system that does meet those requirements.

Chapter 2: The Implementation Process

HUD's Office of Regulatory Affairs and Manufactured Housing

The SAFE Act is administered by the Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing (ORAMH) at the U.S. Department of Housing and Urban Development. HUD is reorganizing ORAMH to establish a separate SAFE Act office and is also procuring the contracts and hiring the staff that will be necessary to carry out its statutory responsibilities.

Outreach to the States

ORAMH has worked closely with the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to encourage all U.S. states and territories to enact SAFE Act compliant legislation or regulations by the July 31, 2009 deadline set by Congress.

Immediately following the passage of the SAFE Act, CSBS and AARMR assisted states with implementation of the SAFE Act through the development of model state legislation (MSL)¹⁵ to facilitate state compliance with the SAFE Act. Because overall responsibility for interpretation and compliance with the SAFE Act rests with HUD, CSBS and AARMR requested that HUD review the model legislation and advise whether the model legislation met the minimum requirements of the SAFE Act. HUD reviewed the model legislation, and in January of 2009 published a Commentary¹⁶ on its website concluding that the model legislation offers an approach that does in fact meet the minimum requirements of the SAFE Act. States that adopt and implement a state licensing system following the provisions of the model legislation, whether by statute or regulation, will therefore be presumed to have met the minimum requirements of the SAFE Act.

In the January 2009 Commentary, HUD also presented its interpretations of certain statutory provisions that required clarifying analysis in order to determine whether the MSL met the minimum requirements of the SAFE Act. These interpretations, referred to as HUD's Commentary can be found in Appendix A. (See also HUD's Federal Register notice published on January 5, 2009, at 74 FR 312, advising of the availability of the model legislation and HUD's Commentary.)

¹⁵ A copy of the Model State Legislation can be found at <http://www.hud.gov/offices/hsg/ramh/safe/modellaw.pdf>.

¹⁶ See appendix A.

HUD provided additional guidance to states in June of 2009 with the posting of a list of Frequently Asked Questions and Answers (FAQs).¹⁷ The FAQs were developed following extensive discussions with both state and industry trade groups. The FAQs are intended to present HUD's views on the SAFE Act's requirements to the states in light of the July 31 deadline for states to comply with the minimum requirements of the SAFE Act.

SAFE Act Guidance

Numerous interpretative questions have been raised by the states including requests for additional information on what constitutes "engaging in the business of a loan originator." Moreover, additional guidance is needed on how HUD will evaluate the compliance of participating state's licensing programs with the minimum requirements of the SAFE Act, and how the Department will operate licensing programs in nonparticipating states. HUD will continue to provide guidance to states and address these questions to states directly on a case-by-case basis or through HUD's "SAFE Act" website.

Compliance Review Process

HUD will begin reviewing state mortgage licensing laws immediately following the July 31, 2009 deadline for enacting SAFE Act compliant laws for licensing mortgage loan originators. Where HUD finds that a state has failed to meet the minimum requirements of the Act, the Department may give that state additional time (up to 24 months) to enact SAFE Act compliant legislation where "the Secretary determines that such state is making a good faith effort. . . ." Determinations as to whether a state will be granted a good faith extension will be made on a case-by-case basis, and will take into consideration any extenuating circumstances that may have contributed to the state's failure to comply.

HUD Backup Program

HUD will establish a backup licensing system that will be put in place for mortgage loan originators where a state elects not to participate in the SAFE Act program or fails to create a SAFE Act compliant system within a reasonable period of time. The backup licensing system will be a mandatory system of licensing, registration and enforcement for all state-licensed loan originators operating or conducting business within the nonparticipating state, and will operate in addition to any existing state-run programs.

CSBS & AARMR

The Conference of State Bank Supervisors (CSBS) in cooperation with the American Association of Residential Mortgage Regulators (AARMR) established the State Regulatory Registry LLC (SRR) on September 29, 2006. A limited-liability company, SRR was established

¹⁷ See appendix B.

to develop and operate nationwide systems for state regulators in the financial services industry. Such systems are intended to enhance the ability of states to protect consumers; improve supervision and enforcement of licensed entities; and streamline licensing and other processes for state agencies and the industry through the use of modern technology and centralizing redundant state agency operations.

SRR is governed by a six-member Board of Managers comprising state regulators. SRR currently owns and operates the NMLS¹⁸, which was developed by state mortgage regulators. NMLS began operations on January 2, 2008 and is used by state residential mortgage regulators to process licenses by mortgage lenders, brokers and/or professionals. In 2009, the System is scheduled to offer consumers an online public database disclosing the licensing information of firms and individuals, including any state enforcement history.

NMLS Development

State mortgage regulators from around the country have been working since 2003 to develop a nationwide licensing system for the residential mortgage industry that would improve supervision of the mortgage industry, streamline the licensing process for mortgage companies and professionals, and enhance consumer protection. Although not yet fully compliant with all the requirements of the SAFE Act, the NMLS is fully operational and is currently maintained by the SRR.¹⁹

The Nationwide Mortgage Licensing System is a web-based system that allows state licensed mortgage lenders, mortgage brokers, and loan officers to apply for, amend, update or renew a license online for all participating state agencies using a single set of uniform applications. The NMLS facilitates the licensing and regulatory process for state regulators and licensed individuals, but does not have any regulatory authority to approve, deny, suspend or revoke an individual's license. The system originates and tracks unique identification numbers for all state licensed mortgage loan originators. The NMLS provides for a central repository of licensing information and enforcement actions creating greater consumer protection, accountability, industry professionalism and efficiencies.

The System is generally available during extended business hours seven days a week, 362 days per year.

By the end of 2008 there were 19 states using the NMLS as their licensing system of record to process and manage new and existing licenses. As of June 20, 2009, 26 states were using the NMLS and a total of 33 states are projected to be using the System by the end of 2009.

¹⁸ The Nationwide Mortgage Licensing System or NMLS is the trade name used by the State Regulatory Registry for the nationwide mortgage licensing and registry.

¹⁹ The State Regulatory Registry is a wholly owned subsidiary of CSBS and owns and operates the Nationwide Mortgage Licensing System (NMLS). The board of managers consists of six state bank and mortgage regulators. Formed in 2006, SRR is a non-profit corporation based in Washington, DC.

NMLS operates a call center in Rockville, Maryland that provides support to NMLS users, including assistance in setting up an initial account, completing uniform license application forms, submitting such forms to state regulators and guidance through the renewal process. By assisting users in navigating through a new electronic system, the call center played a key role in the System's success during its first year of operation. The call center activity was at its highest just prior to state transition deadlines and during the November 1st to December 31st annual renewal period.

The call center expanded its hours of operation during 2008 as western states came onto the System. At year-end the call center was open from 8:00 AM to 7:00 PM ET. Call center staffing also increased during the year to meet increasing demands as additional states transitioned onto the System. At year-end the call center employed 34 full-time professionals.

The NMLS Call Center was also engaged on a case-by-case basis to assist state agencies and licensees by making outbound calls to offer assistance in advance of state deadlines. The NMLS Call Center is funded through the NMLS processing fees and operates free of charge to System users.

About six months prior to a state's participation in NMLS, SRR begins work with a regulatory agency to develop a transition plan for the agency and its licensees, provides training, and gathers license information and other data from the agency to be included in the System and on the NMLS Resources website. Agency staff participates in a three-day NMLS classroom training session in Rockville, Maryland and are given access to an NMLS training environment. In addition, SRR developed multiple vehicles to train regulator and industry users on how to get started and proficiently use the System. The NMLS Resources website provides tools and resources including navigation guides, interactive tutorials, work flow processes, and quick guides. In 2008, SRR held over 30 live training events for industry and regulatory users which provided instruction to over 1,300 professionals. The first NMLS annual user's conference was held in February 2009.

Federal Banking Regulators

On June 9, 2009, the federal banking agencies and the FCA issued a joint notice of proposed rulemaking on the registration of mortgage loan originators (Registration Rule). With respect to mortgage loan originators employed by federally regulated institutions, the Act requires federal banking agencies, through FFIEC, and the FCA to develop and maintain a federal registration system, and to implement this system by July 29, 2009 (federal registration). The SAFE Act specifically prohibits an individual employed by a federally regulated institution from engaging in the business of residential mortgage loan origination without first obtaining and maintaining annually a registration as a registered mortgage loan originator and obtaining a unique identifier.

The federal registry is part of the NMLS web-based system developed and maintained by CSBS and AARMR. The federal banking agencies, through the FFIEC, and the FCA (hereinafter collectively referred to as Agency) are working with CSBS to modify the NMLS so that it can accept registrations from mortgage loan originators employed by Agency-regulated institutions. These differences between the current NMLS and the federal registration system required by the SAFE Act, as well as the resulting modifications necessary to support both state licensing and federal registration functions, require careful analysis and raise complex legal and system development issues that the Agencies are addressing through both rulemaking and modifications to the NMLS. The Agencies and CSBS have made substantial progress in resolving these issues, and the Agencies expect to enter into an agreement with the Registry that will provide for appropriate consultation between the Agencies and the Registry concerning registrant information requirements and fees, system functionality and security, and other operational matters. However, final determination of system costs, funding, design, development and deployment will not be completed until after the Agencies adopt a final rule establishing registration requirements.

The proposed registration rule provides for a 180-day period within which to complete initial registrations after the Registry is capable of accepting registrations from employees of Agency-regulated institutions. During this period, employees of Agency-regulated institutions would not be subject to sanctions if they originate residential mortgage loans without having completed their registration. The Agencies expect that this time period would provide mortgage loan originators and the Agency-regulated institutions that employ them adequate opportunity to prepare for the registrations required under this proposal. The Agencies intend to make a formal public announcement, in advance, of the date when the Registry will begin accepting registrations from employees of Agency-regulated institutions.

When fully operational, mortgage loan originators and their Agency-regulated institution employers are expected to have access to the Registry, seven days a week, to establish and maintain their registrations. The Registry will not screen or approve registrations received from employees of Agency-regulated institutions. Instead, it will be the repository of, and conduit for, information on those employees who are mortgage loan originators at Agency-regulated institutions. It will be the responsibility of each Agency-regulated institution to review its employees' submissions as well as any reports received from the Registry.

Chapter 3: Status Report

As of July 20, 2009, 26 states were using the NMLS to begin to license loan originators, primarily under laws passed before the SAFE Act, and were already managing over 80,000 active or pending licenses for individuals through the system. Moreover, as of June 30, 2009, 43 states and the District of Columbia had passed some type of legislation to comply with the Act's requirements.

Nationwide Mortgage Licensing System and Registry

CSBS and AARMR are currently working to modify the NMLS to fully implement the requirements of the SAFE Act, and fully expect to meet the deadlines set by HUD for states to implement the Act's requirements.

SAFE Act Requirement	Proposed Implementation Date
Issuance of unique identifiers	Implemented
Fingerprint processing and background checks	Early 2010
Review and approval pre-licensure and continuing education courses	August 2009
Develop a qualified written test and approve test providers	July 2009 (National Test)
Provide consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.	Fall 2010
Annual renewals of state licenses	2010
Collection and processing reports of condition	2010

SAFE Act Requirement: Issuance of unique identifiers

The NMLS currently issues a unique identifier to each individual mortgage loan originator registered on the System.

SAFE Act Requirement: Fingerprint processing and background checks.

Under the SAFE Act, all mortgage loan originators must provide fingerprints to the NMLS for the purpose of receiving a criminal history background check. The NMLS is working toward implementing a comprehensive process in early 2010 that will include electronic fingerprint capture, fingerprint routing to law enforcement, receipt of criminal history background checks, attachment of the background check to the mortgage loan originator's record in the NMLS and retention of the mortgage loan originator's fingerprint images for future use if needed. As part of this comprehensive process, the NMLS intends to implement an electronic fingerprint capture network to provide mortgage loan originators with numerous locations to satisfy the fingerprint requirement.

Where possible, the NMLS will utilize existing electronic fingerprint capture locations to add ease of use and flexibility to this comprehensive network.

SAFE Act Requirement: NMLSR must review and approve, using reasonable standards, pre-licensure and continuing education courses.

The SAFE Act requires that state-licensed mortgage loan originators (MLOs) must complete pre-licensure and annual continuing education. In order to meet pre-licensure continuing education requirements state-licensed MLOs must complete 20 hours of NMLS approved education which include the following:

- 3 hours of federal law and regulations;
- 3 hours of ethics, this shall include instruction on fraud, consumer protection, and fair lending issues;
- 2 hours of training related to lending standards for the nontraditional mortgage product marketplace; and
- 12 hours of undefined instruction on mortgage origination.

For annual continuing education, the SAFE Act requires each state-licensed MLOs to complete:

- 3 hours of federal law and regulations;
- 2 hours of ethics that shall include instruction on fraud, consumer protection, and fair lending issues;
- 2 hours of training related to lending standards for the nontraditional mortgage product market; and
- 1 hour of undefined instruction on mortgage origination.

While the SAFE Act requires the NMLS to approve pre-licensure and continuing education courses, it is individual state law that compels mortgage loan originators to take the pre-licensure and continuing education as a requirement for state licensure. The NMLS provides information concerning education requirements and administers the process for completing it,

but state-licensed MLO's are referred to the appropriate state agencies. The SAFE Act establishes minimum requirements but allows states to exceed the established standards. Consequently, some states have established specific state educational requirements in addition to those required by the SAFE Act. The NMLS has been in discussion with multiple states to understand the requirements and to coordinate state transition plans.

In accordance with the SAFE Act, the NMLS, in cooperation with 15 state mortgage regulatory agencies, has developed policies, procedures, and standards for the approval of pre-licensure and annual continuing education courses. Technical functional requirements were identified in February and March 2009, and enhancements were made to the NMLS by June 2009. The NMLS began receiving and processing course provider applications on June 22, 2009. By June 30, 2009, NMLS had communicated with over 100 course providers nationwide. Applications for course approval are scheduled to be received in July 2009 and the NMLS approved pre-licensure courses will begin to be available to MLOs by August 2009. Priority attention is being given to approve pre-licensure courses for MLO's in states with early implementation deadlines established by state legislation that was passed to comply with the SAFE Act.

SAFE Act Requirement: NMLS must develop a qualified written test and approve test providers.

The SAFE Act requires that state-licensed loan originators pass a qualified written test developed by the NMLS and administered by an approved test provider. As required by the SAFE Act, the test is designed to adequately measure an individual's knowledge and comprehension in appropriate areas, to include:

- Ethics;
- Federal law and regulation pertaining to mortgage origination;
- State law and regulation pertaining to mortgage origination;
- Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

The SAFE Test includes two components: a National Component and a Unique State Component. A MLO wishing to satisfy the SAFE test requirements for licensure in any given state or jurisdiction must pass with a test score of not less than 75 percent correct answers. MLOs wishing to seek licensure in more than one state or jurisdiction must pass the Unique State Component test in each of those states.

In July 2009 the National Component and eleven Unique State Components are scheduled to be made available.

While the SAFE Act requires the NMLS to develop the SAFE Mortgage Test, each state's licensing law dictates when an MLO must take the SAFE Mortgage Test as a requirement for state licensure. The NMLS provides information concerning the content of the SAFE

Mortgage Test content and the process for completing it, but MLOs are advised to refer to their state agency about the timing of the SAFE test requirement.

SAFE Act Requirement: NMLS is to provide consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.

Under the SAFE Act, the NMLS must provide consumer access to mortgage loan originator licensing and enforcement actions. The NMLS is working toward implementing consumer access in two phases. Phase one will provide web-access to licensing information on mortgage loan originators and phase two will add publicly adjudicated disciplinary and enforcement actions. Phase one is scheduled to be available in early 2010 and phase two in the Fall of 2010.

SAFE Act Requirement: Annual renewal for state-licensed loan originators shall meet the minimum standards under the SAFE Act

Under the SAFE Act, states must ensure that mortgage loan originators meet the minimum standards for licensure and education each year. State regulatory agencies will accomplish this through the NMLS when a mortgage loan originator renews his/her license at calendar year-end. Functionality is scheduled to be added in 2010 to the NMLS to assist the states in meeting this requirement.

SAFE Act Requirement: Each mortgage licensee shall submit to the NMLS reports of condition, which shall be in such form and shall contain such information as NMLS may require.

Under the SAFE Act, the NMLS must develop a mortgage call report to be submitted by the licensees or their company under the requirements of the SAFE Act. Design of the requirements of the mortgage call report is under way and deployment of this functionality in the NMLS is scheduled in 2010.

Total number of state regulators trained on use of NMLS as of June 30, 2009.

Although not required by the SAFE Act, the SRR provides training to state personnel prior to using the NMLS. Training includes classroom training and webinars as system functionality is enhanced, and refresher training. Classroom-based training includes three days of classroom training in Rockville, Maryland. Classroom training statistics:

- State employees trained: 155
- States trained: 30 states, the District of Columbia and Puerto Rico
- Training sessions held: 16

- Regulator webinars conducted 9

State regulators also have access to the NMLS training environment which provides agencies with an opportunity to update and develop processes and procedures with the use of the NMLS. In addition to training provided by the states, the NMLS provided industry training to state-licensed companies and mortgage loan originators. Training to industry is done via webinar and in person training organized through state agencies and state trade associations. Industry training statistics:

- Industry webinars conducted: 21
- In person industry training sessions held: 15

State Licensing Programs

To meet the requirements of the SAFE Act, most states had to change or amend their laws and regulations. Subsequent to the passage of the SAFE Act, HUD worked closely with CSBS and AARMR to reach out to states and the financial services industry regarding the development of NMLS and of legislation that would meet the requirements of the SAFE Act. HUD approved the MSL developed by CSBS and AARMR to assist and facilitate states to enact legislation on mortgage loan originator licensing that complies with the SAFE Act.

As of June 30, 2009, forty-three states and the District of Columbia had passed SAFE legislation. The chart below provides a status by state of enabling legislation to enact the requirements of the SAFE Act.

State	Bill Number	Enacted(X=Passed)
Alabama	SB 249	5/21/2009
Alaska	HB 221	6/16/2009
American Samoa		
Arizona	HB 2143	X
Arkansas	HB 1881	4/1/2009
California	AB 34/SB 36	
Colorado	HB 1085	5/21/2009
Connecticut	SB 948	6/18/2009
Delaware	SB 73	X
District of Columbia	B17-1021	1/12/2009
Florida	SB 2226	6/29/2009
Georgia	HB 312	4/29/2009
Guam		
Hawaii	SB 1218	X
Idaho	HB 169	4/7/2009
Illinois	HB 4011	X
Indiana	HB 1634/ HB 1646	X
Iowa	SF 355	4/15/2009
Kansas	SB 240	3/27/2009
Kentucky	HB 106	3/27/2009

Louisiana	HB 810	X
Maine	SP0523	6/11/2009
Maryland	HB 292/SB 269	4/14/2009
Massachusetts	H980/S452	
Michigan	SB 462	
Minnesota	HF 2123	5/11/2009
Mississippi	SB 2983	4/15/2009
Missouri	HB 382	X
Montana	SB 351	4/20/2009
Nebraska	LB 328	4/22/2009
Nevada	AB 523	6/8/2009
New Hampshire	HB 610 FN	X
New Jersey	AB 3816	5/4/2009
New Mexico	SB 342 / HB 316	4/6/2009
New York	A6924	
North Carolina	HB 1523	
North Dakota	SB 2160	4/9/2009
Northern Mariana Islands		
Ohio	HB 1	
Oklahoma	SB 1062	5/12/2009
Oregon	HB 2189	X
Pennsylvania	SB 936	
Puerto Rico	PC 1578	
Rhode Island	H 5704 / S 0461	X
South Carolina	SB 673	6/3/2009
South Dakota	HB 1060	3/16/2009
Tennessee	HB2316	6/23/2009
Texas	HB 10	6/19/2009
Utah	HB 286/ SB 31	3/20/2009
Vermont	HB 171	5/21/2009
Virgin Islands		
Virginia	HB 1171	3/27/2009
Washington	SB 1749/ HB 1621	4/17/2009
West Virginia	SB 532	5/7/2009
Wisconsin	SB62	2/19/2009
Wyoming	HB 169	3/12/2009

Chapter 4: Legislative Recommendations

In accordance with Section 1516(a) of the SAFE Act, HUD puts forth the following legislative recommendations and comments to improve the effectiveness of the SAFE Act and to strengthen consumer protections.

HUD Program Fees and Licensing Costs

HUD is continuing to monitor the progress of states and territories in creating licensing and registration systems for loan originators. If a state does not have in place, by law or regulation, a functioning system by July 31, 2009 for the licensure and registration of loan originators in compliance with the SAFE Act, HUD has authority to establish a backup licensing system for licensing and registration of loan originators operating in the state. (Section 1508). Currently under the SAFE Act, when a state is found to be noncompliant and HUD establishes a backup licensing system, HUD does not have authority to collect application fees.

In response, HUD is requesting statutory authority to collect a reasonable fee, as determined by HUD, to cover the administrative costs of processing applications and running a SAFE Act licensing and registration system in a state. HUD also requests specific authority to retain funds collected as application fees and charges for the costs of examinations to pay for administration of the SAFE Act program in noncompliant states, in addition to any funds appropriated by Congress for the continued monitoring of compliant states. The fee would be based upon the administrative costs associated with licensing and continued monitoring for compliance.

Mortgage Call Reports

Under the SAFE Act, each individual loan originator licensee must submit a mortgage call report to the Nationwide Mortgage Licensing System and Registry (NMLSR) as a condition of licensure. (Section 1505(e)). HUD understands a “mortgage call report,” which is undefined in the SAFE Act, to be a statement of condition of a mortgage company and its operations, including financial statements and production volumes. HUD seeks clarification on how individuals should be held responsible for submission of a report that is normally submitted by a company.

Conclusion

On January 2, 2008, prior to the enactment of the SAFE Act, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) launched the Nationwide Mortgage Licensing System (NMLS).²⁰ This system is currently being adapted to function as the single NMLSR required by the SAFE Act. HUD is closely monitoring the adaptation process and feels confident based on and the level of functionality that has already been achieved, and assurances from CSBS and AARMR, that the NMLS will be fully compliant with the requirements of the SAFE Act within the next year.

In addition, HUD is working closely with CSBS and AARMR to encourage states to pass SAFE compliant legislation. To assist states in passing compliant legislation HUD has issued commentary on the SAFE Act, approved model state legislation, and posted responses to a number of frequently asked questions.

²⁰ www.stateregulatoryregistry.org/NMLS.

Appendix A: Commentary on the Model State Law

The Housing and Economic Recovery Act of 2008, signed into law on July 30, 2008 (Public Law 110-289) (HERA), constitutes a major new housing law that is designed to assist with the recovery and the revitalization of America's residential housing market - from modernization of the Federal Housing Administration, to foreclosure prevention, to enhancing consumer protections. The SAFE Act is a key component of HERA.

The SAFE Act is designed to enhance consumer protection and reduce fraud by encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators and for the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry for the purpose of achieving the following objectives:

- (1) Providing uniform license applications and reporting requirements for state licensed-loan originators;
- (2) Providing a comprehensive licensing and supervisory database;
- (3) Aggregating and improving the flow of information to and between regulators;
- (4) Providing increased accountability and tracking of loan originators;
- (5) Streamlining the licensing process and reducing regulatory burden;
- (6) Enhancing consumer protections and supporting anti-fraud measures;
- (7) Providing consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators;
- (8) Establishing a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer;
- (9) Facilitating responsible behavior in the subprime mortgage market place and providing comprehensive training and examination requirements related to subprime mortgage lending;
- (10) Facilitating the collection and disbursement of consumer complaints on behalf of state mortgage regulators.

The new standards, as well as the uniformity and consistency of such standards, directed to be established nationwide by the SAFE Act, present a significant step in the effort to increase integrity in the residential mortgage loan market, enhance consumer protections, and reduce fraud. The SAFE Act encourages states to participate in the Nationwide Mortgage Licensing System and Registry, and requires states to have in place, by law or regulation, a system for licensing and registering loan originators that meets the requirements of sections 1505, 1506, and 1508(d) of the SAFE Act. The SAFE Act requires the states to have the licensing and registration system in place by: (1) July 31, 2009, for states whose legislatures meet annually; and (2) July 31, 2010, for states whose legislatures meet biennially. For both this 1-year period and 2-year period, HUD may extend the deadline, by not more than 24 months, if HUD determines that a state is making a good faith effort to establish a state licensing law that meets the minimum requirements of the SAFE Act. (See the complete text of the SAFE Act.)

To aid and facilitate states' compliance with the requirements of the SAFE Act, the Act directs the establishment of a nationwide mortgage licensing system and registry (NMLSR), to be developed and maintained by CSBS and AARMR. If HUD determines that a state's mortgage loan originator licensing standards do not meet the minimum requirements of the Act, HUD must implement and administer a licensing system for that state. A loan originator in such a state would have to comply with the requirements of HUD's SAFE Act-compliant licensing system for that state as well as with any applicable state requirements. A HUD license for a state would be valid only for that state, even if HUD must implement licensing systems in multiple states. Additionally, if HUD determines that the NMLSR is failing to meet the requirements and purposes of the SAFE Act, HUD must establish a system that meets the requirements of the SAFE Act.

For the last several months, CSBS and AARMR have undertaken considerable outreach to states and the financial services industry regarding the development of the NMLSR and of legislation that would meet the requirements of the SAFE Act. CSBS and AARMR have developed a model state law (MSL) designed to assist and facilitate states to enact legislation on mortgage loan originator licensing that complies with the SAFE Act and by the deadlines imposed by the SAFE Act. While states are charged with enacting licensing standards that meet the requirements of the SAFE Act, overall responsibility for interpretation, implementation, and compliance with the SAFE Act rests with HUD. In this regard, CSBS and AARMR requested that HUD review the model legislation, and advise of its sufficiency in meeting applicable minimum requirements of the SAFE Act.

CSBS/AARMR Model Legislation

HUD reviewed the model legislation to determine whether it meets the minimum requirements of the SAFE Act and finds that it does. State legislation that follows the provisions of the model legislation, whether by statute or regulation, will be determined to have met the applicable minimum requirements of the SAFE Act. (The complete text of the model legislation, reviewed by HUD, is provided here.) More information about the model legislation can be found at CSBS's [website](#). The commentary that follows presents HUD's views and interpretations of certain statutory provisions that required consideration and analysis in determining that the model legislation meets the minimum requirements of the SAFE Act.

HUD Commentary

Through this commentary, HUD advises of the analysis of the SAFE Act that was undertaken in reviewing the model legislation and of HUD's interpretation of certain provisions in the SAFE Act. These interpretations are designed to assist the states, as well as members of the public, in understanding how HUD determined that the model legislation meets the minimum requirements of the SAFE Act, and to assist states in adopting legislation or regulations that meet the minimum requirements of the SAFE Act.

A. Standards in Legislation May Exceed Standards in SAFE Act

The SAFE Act's licensing and registration standards for mortgage loan originators are minimum standards. (See section 1505(b).) Legislation enacted or regulations promulgated by a state may exceed the minimum standards of the SAFE Act. States may not, however, enact legislation, promulgate regulations, or otherwise impose requirements that would frustrate the objectives of the SAFE Act, keeping in mind that the SAFE Act's primary objectives include provision of a comprehensive licensing and supervisory system with uniform application and reporting requirements.

B. Definition of Loan Originator

Section 1503(3)(A)(i) of the SAFE Act defines "loan originator" as "an individual who (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for

compensation or gain." Section 1503(3)(B), entitled "Other Definitions Relating to Loan Originator" provides "For purposes of this subsection, an individual assists a consumer in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

HUD interprets "application" to include any request from a borrower, however communicated, for an offer (or in response to a solicitation of an offer) of residential mortgage loan terms, as well as the information from the borrower that is typically required in order to make such an offer. HUD interprets "tak[ing]" an application to mean receipt of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower, whether the application is received directly or indirectly from the borrower.

Since it generally would not be possible for an individual to offer to or negotiate residential mortgage loan terms with a borrower without first receiving the request from the borrower (including a positive response to a solicitation of an offer) as well as the information typically contained in a borrower's application, HUD considers the definition of loan originator to encompass any individual who, for compensation or gain, offers or negotiates pursuant to a request from and based on the information provided by the borrower. Such an individual would be included in the definition of loan originator, regardless of whether the individual takes the request from the borrower for an offer (or positive response to an offer) of residential mortgage loan terms directly or indirectly from the borrower.

The SAFE Act also describes activities in the residential mortgage process that are excluded from the definition of "loan originator." Activities that are excluded are those that pertain to administrative or clerical tasks; real estate brokerage activities by individuals licensed or registered by a state to undertake real estate brokerage activities unless a person is compensated by a loan originator, loan processing or underwriting undertaken under the direction and supervision of a state-licensed loan originator or registered loan originator; and those individuals solely involved in extensions of credit relating to timeshare plans.

HUD interprets an individual who "takes a residential mortgage loan application" to exclude an individual who performs purely administrative or clerical tasks, such as physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower. This interpretation is consistent with the exclusion defined in section 1503(3)(C) of the SAFE Act. On the other hand, HUD views activity that involves assisting or advising a prospective borrower in the completion of an application extending beyond purely administrative or clerical tasks falls within coverage of the SAFE Act provided by section 1503(3)(B). As a result, an individual who offers or negotiates residential mortgage loan terms for compensation or gain could not avoid applicability of the SAFE Act standards by having another person or entity take the application from the prospective borrower and then pass the application to the individual. A state licensing and registration system that permits such individuals to avoid compliance with SAFE Act standards would be determined by HUD to be not in compliance with the SAFE Act. A state may clarify that such individuals are not exempt from licensing requirements. The MSL provides one approach in making this clarification in section XX.XXX.030(6).

Notwithstanding the broad definition of "loan originator" in the SAFE Act, there are some limited contexts where offering or negotiating residential mortgage loan terms would not make an individual a loan originator. The provision in the definition that loan originators are individuals who take an "application" implies a formality and commercial context that is wholly absent where an individual offers or negotiates terms of a residential mortgage loan with or on behalf of a member of his or her immediate family. State legislation that excludes from licensing and registration requirements an individual who offers or negotiates terms of a residential mortgage loan only with or on behalf of an immediate family member will not be found to be out of compliance with the SAFE Act merely because of such exclusion. The MSL includes this exclusion in section XX.XXX.040(3)(b).

The commercial context implied by the taking of an "application" is also absent where an individual seller provides financing to a buyer pursuant to the sale of the seller's own residence. The frequency with which a

particular seller provides financing is so limited that HUD's view is that Congress did not intend to require such sellers to obtain loan originator licenses. Accordingly, state legislation that excludes from licensing and registration requirements an individual who offers or negotiates terms of a residential mortgage loan only to the buyer or prospective buyer of the seller's residence will not be found to be out of compliance with the SAFE Act. The MSL includes this exclusion in section XX.XXX.040(3)(c).

Additionally, the definition generally would not apply to, for example, a licensed attorney who negotiates terms of a residential mortgage loan with a prospective lender on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, mortgage broker, or other mortgage loan originator or by an agent of such lender, mortgage broker, or other loan originator. In such cases, the duties of loyalty, competence, and diligence owed by the attorney to his or her client are significant. HUD views the SAFE Act's requirements for registration and licensing as not applying in this context, which is distinguished from the commercial context contemplated in the SAFE Act. The MSL includes this exclusion in section XX.XXX.040(3)(d).

C. Definition of "Dwelling"

The SAFE Act's definition of "residential mortgage loan" includes a loan secured by a consensual security interest on a "dwelling" and cross-references the definition of dwelling in section 103(v) of the Truth in Lending Act (TILA) (15 U.S.C. 1601 note).

Regulation Z, which implements TILA, defines dwelling to mean "a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence." (12 CFR 226.2(a)(19).) Since both the SAFE Act and TILA address consumer protections for borrowers in housing finance transactions, HUD finds that the same interpretation applies under the SAFE Act. In addition, HUD interprets "mobile home" to include a manufactured home, as defined in the National Manufactured Housing Construction and Safety Standards Act of 1974. (42 U.S.C. 5402(6).)

D. Delayed Effective Date of Requirement to Obtain and Maintain a License

Under the SAFE Act, HUD may determine the acceptability of states' licensing and registration systems and of their participation in the NMLS as early as July 31, 2009, or July 31, 2010, as applicable. As a result, states are facing tight deadlines before they must enact legislation and implement systems to carry out licensing and registration requirements. To meet the SAFE Act's licensing requirements, NMLSR will have to develop tests and approve educational courses, mortgage loan originators will have to comply with testing, education, and bonding requirements, and states will have to evaluate the records of thousands of applicants.

Although a state should enact legislation or promulgate regulations by the applicable deadline, HUD's position is that Congress did not intend for states to require all mortgage loan originators to be licensed in accordance with the SAFE Act's standards immediately upon enactment of the state's legislation or issuance of regulations. Such a requirement could cause a massive disruption in the housing finance industry at a time when millions of Americans may be seeking to refinance their existing mortgages or to purchase a new home. The ability of loan originators to facilitate such transactions is critical to ameliorate the current conditions in the housing market, but in many states, individuals currently performing loan originations may not be able to meet the educational, testing, and background check requirements by the time required legislation or regulations become effective. In addition, HUD is aware that some states already require licensure of loan originators, and that some individuals in those states will hold licenses that do not expire until as late as December 2010. Nonetheless, the provision for HUD to enforce the SAFE Act's standards in any state that fails to implement these standards reflects the underlying statutory concern that loan originators who do not meet these standards pose a significant risk to borrowers and the housing finance system. As a result, any period during which loan originators may operate

without a SAFE Act-compliant license must be only as long as necessary for substantial numbers of qualified loan originators to obtain licenses.

Accordingly, HUD will not determine that a state's legislation is not in compliance with the SAFE Act merely because the legislation or regulations provide for a reasonable period following enactment for certain loan originators to be licensed under the new requirements. Considering the education, testing, and background check standards that license applicants must meet, HUD views a reasonable delay, with respect to individuals who do not already possess a valid loan originator license, is one which does not extend past July 31, 2010. Such a delay generally provides one year from state enactment of legislation for individuals to come into compliance with applicable requirements. (HUD has determined that all state legislatures that meet only biennially meet in 2009, which means that these states will have the opportunity to enact SAFE Act compliant legislation by July 31, 2009.) For individuals who possess licenses granted under a system that was in place prior to the SAFE Act-compliant system, HUD views a reasonable delay is one that does not extend past December 31, 2010. This effective date will accommodate individuals with two-year licenses that were granted or renewed as late as December 2008, and also synchronizes with the NMLSR's uniform annual license expiration date of December 31. The MSL provides in section L26-(1)(2) for these delayed effective dates for the state licensing requirement, and provides that these effective dates could be further extended only with HUD's approval. HUD may approve a later date only upon a state's demonstration that substantial numbers of loan originators (or of a class of loan originators) who require a state license face unusual hardship, through no fault of their own or of the state government, in complying with the standards required by the SAFE Act to be in the state legislation and in obtaining state licenses within one year.

E. State of Licensure

Section 1504(a) of the SAFE Act prohibits an individual from "engag[ing] in the business of a loan originator" without first obtaining a registration or state license. HUD interprets this provision to mean that an individual must comply with licensing and registry requirements of a state in order to engage in the business of a loan originator with respect to any residential property in that state, regardless of whether the individual or the prospective borrower is located in the state. This interpretation ensures that each state is able to establish and enforce the provisions of its SAFE Act licensing system and prevents an individual from circumventing a state's requirements simply by physically locating outside of the state and conducting business by telephone or other means. This interpretation, however, does not affect the level of reciprocity a state may grant to another state's determination that its own SAFE Act-compliant licensing requirements have been met. This interpretation promotes clarity by unambiguously determining which state's license is required for a given transaction. The MSL incorporates this interpretation in section XX.XXX.040(1).

F. Felony Convictions

Section 1505(b)(2) of the SAFE Act provides that, to be eligible for a license, an individual must not have been convicted of any felony within the preceding seven years or convicted of certain types of felonies at any time prior to application. Since the provision is triggered by a conviction, rather than by an extant record of a conviction, HUD interprets the provision to make an individual ineligible for a loan originator license even if the conviction is later expunged. Pardoned convictions, in contrast, are generally treated as legal nullities for all purposes under state law and would not render an individual ineligible. The law under which an individual is convicted, rather than the state where the individual applies for a license, determines whether a particular crime is classified as a felony. The MSL clarifies that a pardoned conviction does not render an individual ineligible for a license under section XX.XXX.060(2)(c).

G. Surety Bond

Section 1508(d)(6) of the SAFE Act provides that states must set minimum net worth or surety bond requirements or establish a recovery fund paid into by loan originators. HUD has determined that a state may

comply with the SAFE Act requirement by providing that, in the case of a company that employs more than one loan originator, the bonding requirement may be met at the company level. Individual loan originators would not have to be bonded separately. The MSL incorporates this interpretation in section XX.XXX.140(1).

Appendix B: Frequently Asked Questions & Answers

HUD provides the following guidance on HUD's present views in response to questions that have arisen under the SAFE Act.

1. Provisional Licensing:

QUESTION: May a state issue "provisional licenses" to mortgage loan originators who have not completed the SAFE Act's testing and education, or prior to a state's completion of the required background check?

ANSWER: A state may issue a SAFE-compliant loan originator license only upon evidence sufficient to support findings by the state agency that each of the minimum licensing standards has been met. Nothing in the SAFE Act prohibits a state from seeking additional evidence after it issues a license or from reconsidering the accuracy of a prior finding upon considering additional evidence that becomes available to the state. Please also see section D of HUD's Commentary on the Model State Law ("HUD's Commentary," also available on the SAFE Act page of this website) for guidance on dates by which states must require individuals to obtain SAFE-compliant licenses.

2. Grandfathering for Testing and Education Requirements:

QUESTION: May a state's SAFE legislation contain a grandfathering provision allowing mortgage brokers and others who have been engaged in the business of originating loans for an extended period of time to meet the SAFE Act's testing and education requirements by some alternative means?

ANSWER: No. The SAFE Act does not allow alternative methods for meeting the testing and education requirements.

3. States with Legislation passed by July 31, 2009, but Later Effective Date:

QUESTION: Will a state meet the deadline of July 31, 2009 required by the SAFE Act where that state's SAFE legislation is signed into law by the Governor before July 31, 2009, but has a later effective date for the licensing and registration of loan originators?

ANSWER: Yes, but the date by which individuals are required to comply with the requirements of the legislation should comply with the Guidance in section D of HUD's Commentary.

4. States Using Term Other than License:

QUESTION: Will a state meet the minimum requirements of the SAFE Act where a state legislature elects to use a term other than "license" or "licensing" for the regulation and supervision of mortgage loan originators? Examples of alternative terms include: "authorization," "registration," or "certification" of mortgage loan originators?

ANSWER: Yes, provided the authorization, registration, or certification is the functional equivalent of licensing and satisfies the minimum requirements mandated by the SAFE Act.

5. Loan Modifications Performed by Loan Servicers:

QUESTION: Do the licensing requirements of the SAFE Act apply to individuals who perform loan modifications for loan servicers that modify existing loans?

ANSWER: HUD recognizes that servicers are increasingly taking applications for and negotiating the terms of loan modifications that substantially alter the terms of existing mortgage loans. These types of loan servicing activities are often very different from what industry and the public viewed as typical loan servicing activities only a few years ago. Today's loan modifications may include an increase or decrease in the interest rate, a change to the type of interest rate (e.g. fixed rate versus adjustable rate), an extension of the loan term, an increase or a write-down of the principal, the addition of collateral, changes to provisions for prepayment penalties and balloon payments, and even a change in the parties to the loan through assumption or the addition of a cosigner. The activities of a loan servicer that result in modification of the terms of a residential mortgage loan can be virtually indistinguishable from the performance of a refinancing, which is unambiguously covered by the SAFE Act.

Given the extent of loan modifications being undertaken, HUD is generally inclined to provide in rulemaking that the SAFE Act's definition of a loan originator covers an individual who performs a residential mortgage loan modification that involves offering or negotiating of loan terms that are materially different from the original loan, and that such individuals are subject to the licensing and registration requirements of the SAFE Act. At least in some circumstances, when a borrower seeks modification of an existing loan, he or she is requesting an offer of terms that are different from those of his or her existing loan. The loan servicer responds to this request by requesting from the borrower much of the same, if not exactly the same, information necessary in an application to refinance a mortgage or obtain a new loan, and the loan servicer offers or negotiates the terms of the modification with the borrower. HUD appreciates that lenders and servicers are working in a dynamic market, especially given the current housing crisis, and HUD looks forward to comments on this issue during the rulemaking process.

HUD understands the initial uncertainty about whether loan servicers are covered by the SAFE Act. Loan servicers involved in traditional loan servicing activities are likely not covered by the SAFE Act, but today, given the housing crisis, loan servicers are engaged in modification activities beyond those that they traditionally performed. Accordingly, HUD is inclined to clarify through rulemaking that at least some individuals who engage in loan modification activities are subject to the requirements of the SAFE Act. Any final decision to make this clarification will be addressed in the rulemaking. Because the definition of "loan originator" in the SAFE Act supports coverage of loan servicers engaged in loan modification activities, a state that has enacted legislation that follows the SAFE Act's definition of a "loan originator" will have provided for the possibility of covering these individuals. Accordingly, if HUD adopts a final rule requiring coverage of such individuals, a state would be able to clarify that its legislation provides such coverage through administrative means.

HUD expects to publish a proposed rule that will address several issues that have arisen under the SAFE Act, including coverage of loan servicers engaged in loan modification activities. In its proposed rule, HUD expects to invite state regulators, borrowers, servicers, and other interested members of the public to provide their views on this topic. To maximize the amount of time commenters have to consider and formulate comments on this important matter, HUD is taking this opportunity to highlight a number of related issues. For example, HUD is interested in views on any mandatory licensing provisions, quality controls, and training requirements that are already applicable to servicers, and on whether these measures provide protections for consumers that are equivalent to those under the SAFE Act. HUD is also interested in views on what, if any, characteristics of a modification should be used to classify the modification as so immaterial that it should not be covered by the SAFE Act. Finally, HUD is interested in views on whether it should provide for an extension of the licensing deadline for individuals performing modifications only under the federal government's Making Home Affordable program. HUD is interested in whether, by granting an extension of time under this limited set of circumstances, states could be assured that consumers working with unlicensed individuals are still provided strong protections from fraud and abuse. Such an extension would be in addition to the reasonable delays that states may provide to all individuals, in accordance with the guidance provided in HUD's Commentary. The Commentary provided that states could give all individuals until July 31, 2010 to obtain a license, and could give all individuals who already hold licenses issued under a prior licensing system until December 31, 2010 to obtain a license.

HUD notes that the federal banking agencies recently published their proposed rule on “Registration of Mortgage Loan Originators.” (See 74 FR 27386, published June 9, 2009.) In this proposed rule, the federal banking agencies have specifically requested comment on whether the definition of “mortgage loan originator” should cover individuals who modify existing residential mortgage loans. The federal banking agencies state that if the definition should cover such individuals, then the agencies also seek comment on whether the agencies’ final rule should exclude from this definition persons who modify an existing residential mortgage loan pursuant to applicable law. (See 74 FR 27391-27392.) The solicitation of comments by the federal banking agencies on the subject of mortgage loan modifications reflects concerns similar to HUD’s.

HUD understands that a number of states have expressly provided for coverage of individuals performing modifications for servicers, through legislation or through administrative means. Several states have opted to enact legislation defining a loan originator as an individual who takes a residential mortgage loan application or offers or negotiates the terms of a residential mortgage loan for compensation or gain. HUD notes that it has stated that it has determined that the model state law developed by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR), which contains this definition of loan originator meets the minimum requirements of the SAFE Act. Therefore, since an individual performing a loan modification almost certainly offers or negotiates the terms of a residential mortgage loan, HUD’s view is that such state legislation already covers individuals performing such modifications. Although HUD is requesting the submission on views on whether it will require states to cover such individuals, HUD’s view is that the decisions of those states to cover such individuals are fully consistent with the SAFE Act, and that in any case, states are free to exceed the standards required by HUD.

6. Exemptions, Generally:

QUESTION: May a state exempt certain professions from state licensure?

ANSWER: Generally, no. A state must require licensure of individuals who engage in the business of a loan originator, unless an individual meets the SAFE Act’s definition of a registered loan originator in section 1503(7). HUD clarified in its Commentary that exemptions are permissible under the SAFE Act if they merely clarify that certain defined activities do not constitute engaging in the business of a loan originator. Impermissible exemptions include those based on an individual’s title or profession, or on the status of an entity for which the individual works, if the exemption would allow individuals who engage in the business of a loan originator to escape the SAFE Act’s licensing requirements.

7. Exemption for Non-profit Organizations:

QUESTION: May a state provide an exemption for non-profit organizations?

ANSWER: No. Individuals, not organizations, are subject to the SAFE Act’s licensing requirements. Accordingly, whether an organization has a non-profit status is not determinative as to whether individuals working for or on behalf of such an organization engage in the business of a loan originator and, accordingly, must be licensed. A state may not exempt individuals whose activities constitute “engaging in the business of a loan originator.”

8. Exemption for Agents of Certain Federally Regulated Financial Institutions:

QUESTION: May a state provide an exemption from state licensing requirements for individuals who are agents, but not employees, of a depository institution, a federally regulated subsidiary of a depository institution, or an institution regulated by the Farm Credit Administration?

ANSWER: No. A state must require licensure of individuals who engage in the business of a loan originator, unless an individual meets the SAFE Act’s definition of a registered loan originator in section 1503(7).

A registered loan originator is defined as an individual who meets the definition of a loan originator and who: (a) is an employee of a depository institution, a federally regulated subsidiary of a depository institution, or an institution regulated by the Farm Credit Administration, and (b) is registered with the NMLSR. For example, an individual who is an independent contractor is not an employee. An individual is generally considered to be an employee only if the manner and means of his or her performance of duties is subject to the control of an employer, and if his or her income is reported on a W-2 form. Nor may a state exempt employees of entities other than the three listed classes of institutions. For example, a holding company that merely owns one of the three listed classes of institutions is not itself one of the three listed classes of institutions.

9. Criminal Background Checks and Credit Reports:

QUESTION: Must a state require loan originator license applicants to furnish to the NMLSR fingerprints and authorization to obtain a credit report to the NMLSR?

ANSWER: Yes. Section 1505(a) of the SAFE Act requires an applicant to furnish his or her fingerprints to the NMLSR for submission to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state and national criminal history background check. The applicant also must submit his or her personal history and experience, including authorization for the NMLSR to obtain an independent credit report.

Appendix C: 2008 SRR/NMLS Annual Report

**NMLS
2008 ANNUAL REPORT
Prepared by the State Regulatory Registry**

State Regulatory Registry LLC Nationwide Mortgage Licensing System 2008 Annual Report

Executive Summary

After four years of planning, design and development by state regulators, the Nationwide Mortgage Licensing System (NMLS) launched on January 2, 2008. Selected NMLS statistical highlights during 2008 or at year-end include:

- Seven states participated in NMLS at launch and 19 states participated by year-end
- 14 states processed 30,897 license renewals through NMLS in November and December
- 72,764 entities (companies, branches and mortgage loan originators) that held 90,176 state licenses from 19 participating states were managed by NMLS
- 756,578 transaction requests by licensees to the 19 participating states were processed by NMLS
- Over \$24 million in state license fees were collected and disbursed by NMLS
- 147,758 inquiries from users were answered by the NMLS Call Center
- Over 700,000 visits were made to the NMLS Resources website
- Over 30 live user training sessions, instructing over 1,300 professionals were conducted by the State Regulatory Registry LLC (SRR) in 2008
- SRR net income for 2008 was a negative \$647,000
- SRR had 13 full-time equivalent employees at year-end

SRR and NMLS Organizational History and Background

State Regulatory Registry LLC²¹ was organized in September 2006, by state mortgage regulators through the Conference of State Bank Supervisors²² (CSBS) to own and operate the Nationwide Mortgage Licensing System²³ (NMLS or the System).

SRR is governed by a Board of Managers that consists of state regulatory officials that are members of CSBS and the American Association of Residential Mortgage Regulators²⁴ (AARMR). At the end of 2008 the SRR Board of Managers was comprised of six voting members that include five CSBS representatives and one AARMR representative, as follows: Gavin Gee, Chairman and Idaho Director of Finance; Steven Antonakes, Treasurer and Commissioner, Massachusetts Division of Banks; Thomas Gronstal, Superintendent, Iowa Division of Banking; John Allison, Commissioner, Mississippi Department of Banking and Consumer Finance; Joseph Smith, Commissioner, North Carolina Office of Commissioner of Banks; and David Bleicken, AARMR President and Deputy Secretary, Pennsylvania Department of Banking. The three non-voting, ex officio members were: Timothy Karsky, CSBS Chairman and Commissioner, North Dakota Department of Financial Institutions; Neil Milner, Secretary and CSBS President and CEO; and William Matthews, SRR President and CEO. CSBS' organizational chart is provided in Appendix A.

NMLS is a web-based system that allows state-licensed mortgage lenders, brokers, and mortgage loan originators to apply for, amend, update or renew licenses online for participating state agencies using a single set of uniform applications. NMLS facilitates the licensing and regulatory process for state regulators and licensed entities, but does not have any regulatory authority to approve, deny, suspend or revoke an entity's license. The System originates and tracks unique identification numbers for all state licensed mortgage originators, lenders and brokers. NMLS provides for a central repository of licensing information and enforcement actions creating greater consumer protection, accountability, industry professionalism and efficiencies. More information about NMLS can be found at the NMLS Resources website²⁵.

The initial system that launched in January 2008 had core functionality for regulators and industry users. During 2008 additional functionality was added through three major system upgrades. System enhancements planned for 2009 include consumer access to state licensing information and other SAFE related requirements.

NMLS had no significant operating problems during 2008. The NMLS Call Center played a major role in assisting users to navigate through the System. Recognizing that NMLS is a new system, user input is appreciated and welcomed.

²¹ www.stateregulatoryregistry.org

²² www.csbs.org

²³ www.stateregulatoryregistry.org/NMLS

²⁴ <http://www.aarmr.org/>

²⁵ <http://www.stateregulatoryregistry.org/NMLS>

NMLS Operating Highlights

NMLS Operations. In 2008 the System operated as designed with no major functionality or system availability problems. At year-end, NMLS managed 72,764 entities (companies, branches and mortgage loan originators) that held 90,176 state licenses from 19 participating states.

Chart 1 provides a 2008 year-end breakout of the number of unique entities and licenses by company, branch and mortgage loan originator being managed in the System. On average, each mortgage loan originator and each company held 1.3 and 1.2 licenses, respectively. In as much as some companies have created a branch but not yet submitted a license request; there are more branch entity ID's than number of licenses.

In 2008, NMLS processed 756,578 transaction requests from licensees to the regulators in the 19 participating states. Transaction types included requests to transition existing licenses onto NMLS, new license applications, amendments or updates to an existing license or applicaton, annual license renewals, changes in employment for mortgage loan originators, etc. Table 1 gives a breakdown of major licensee transaction requests to regulators by transaction type by entity. Mortgage loan originators had 60.8 percent of the transactions, compared with 28.1 percent from companies and 11.0 percent from branches.

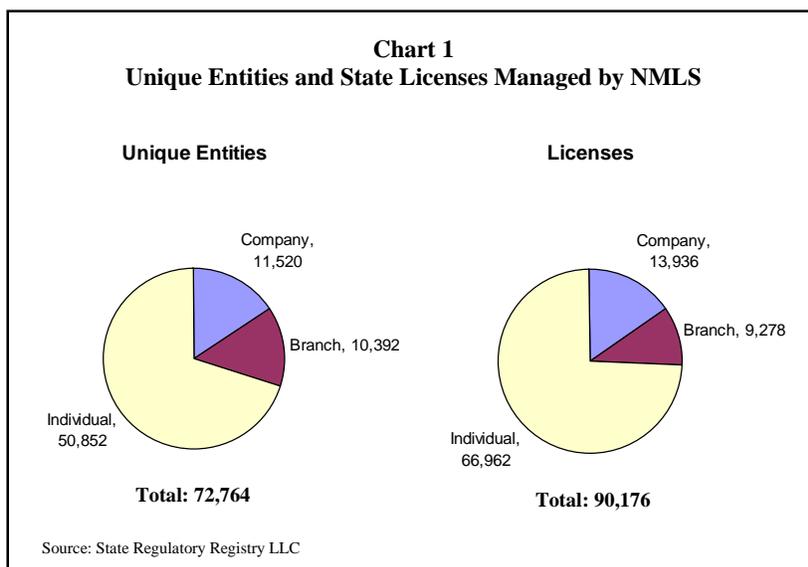


Table 1
2008 NMLS Transactions by Type by Entity

Transaction Type	Company	Branch	Individual	Total	% of Total
Transition Requested	13,193	8,104	35,017	56,314	7.4%
New License Requested	1,891	2,863	33,980	38,734	5.1%
Amendment	188,915	65,659	291,456	546,030	72.2%
Renewal Requested	7,489	4,877	32,035	44,401	5.9%
Sponsorship Request			56,783	56,783	7.5%
Sponsorship Removal			9,456	9,456	1.2%
Surrender Requested	803	1,250	397	2,450	0.3%
Other	495	669	1,246	2,410	0.3%
Grand Total	212,786	83,422	460,370	756,578	100.0%
% of Total	28.1%	11.0%	60.8%	100.0%	

Source: State Regulatory Registry LLC

Amendment transactions had 72.2 percent of the transaction types,

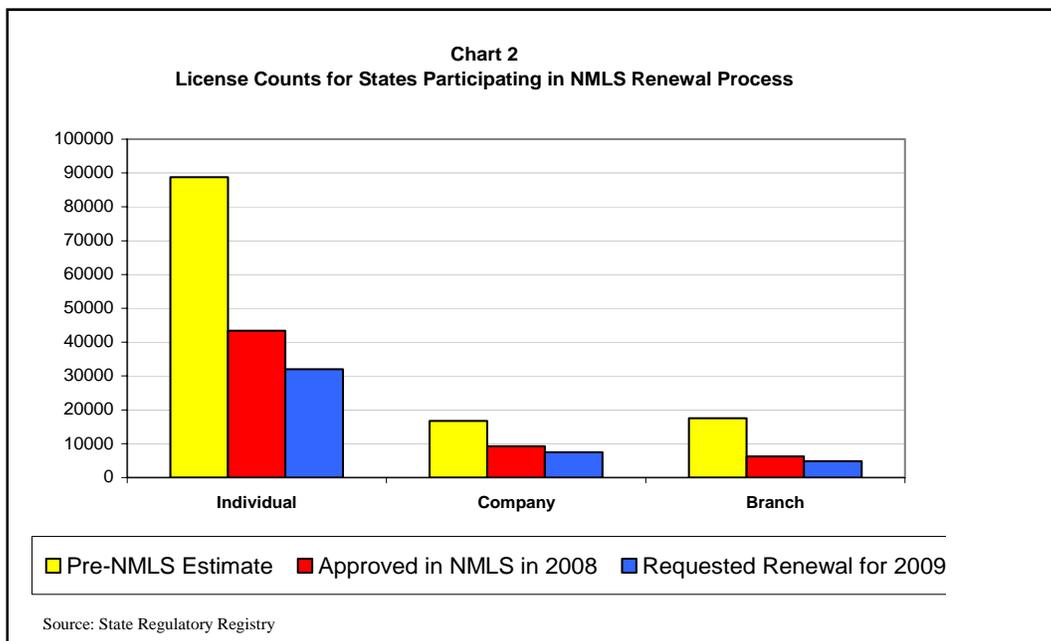
followed by MLO sponsorship requests and existing license transition requests of 7.5 percent and 7.4 percent respectively.

At year-end 2008, licensees in 14 states renewed licenses through NMLS. Licensees are able to update records throughout the year and are required during the November 1 – December 31st renewal period to pay renewal fees and attest to the accuracy and completeness of their record in NMLS. The inaugural 2009 Streamlined Renewal process operated without any major complications with 44,401 renewal requests processed. After an evaluation of the user experience during the 2009 Streamlined Renewal process, several enhancements will be made to NMLS to simplify this process for 2009 renewals.

The System is generally available during extended business hours seven days a week, 362 days per year. In 2008, NMLS was not available for short periods of time to allow for the installation of system upgrades and maintenance.

Chart 2 shows the number of licensees for 14 states that renewed their licenses through NMLS. The “yellow bars” represent the number of licenses by type (company, branch and mortgage loan originator) as estimated in late 2007 by the 14 state mortgage regulators; the “red bars” represent the number of licenses that transitioned onto NMLS in 2008; and the “blue bars” show the number of licensees that renewed their licenses during the 2008 renewal period (November 1st through December 31st).

For these 14 states, only 49 percent of individual mortgage loan originator licenses, as estimated by the state agencies transitioned onto NMLS and only 36 percent renewed licenses at year-end 2008. A total of 55 percent of estimated company licenses transitioned onto NMLS, and 45 percent renewed licenses. Some of the 14 states provided licensees with a reinstatement period in early 2009 to renew its licenses. The percentages in Chart 2 do not reflect any renewals during the reinstatement period.



Participating State Agencies. NMLS launched with seven states on January 2, 2008, and by year-end 19 states were using NMLS as its licensing system of record to process and manage new and existing licenses.

A total of 34 states are scheduled to use the System by Fall of 2009. Chart 3 illustrates the states currently using NMLS and those that are scheduled to participate in 2009 and 2010. Two states, Minnesota and Nevada, have not formally indicated their intent to participate in NMLS.

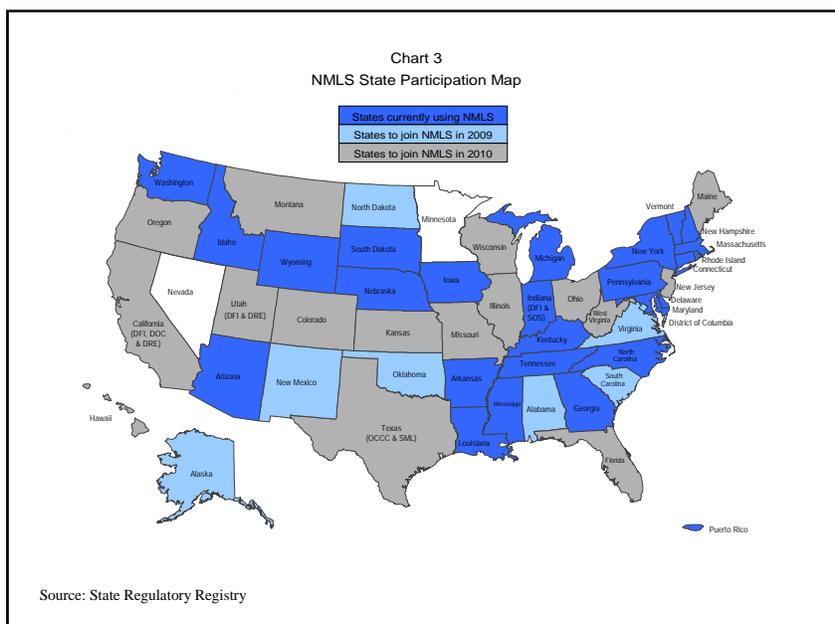
Table 2
2008 Call Center Statistics

	2008 <u>Total</u>	Monthly <u>Average</u>	<u>December</u>
Total calls	147,758	12,313	31,994
Abandoned calls	5,599	467	1,993
Avg. minutes to answer		1.3	3.4
Avg. call length (minutes)		8.8	10.3

Source: State Regulatory Registry LLC

Call Center. NMLS operates a call center in Rockville, Maryland that provides support to NMLS users, including assistance in setting up an initial account, completing uniform license application forms, submitting such forms to state regulators and guidance through the renewal process. By assisting users in navigating through a new electronic system, the call center played a key role in the System’s success during its first year of operation. Table 2 provides statistics for call center activity for 2008. The call center activity was at its highest just prior to state transition deadlines and during the November 1st to December 31st annual renewal period.

The call center expanded its hours of operation during 2008 as western states came onto the System. At year-end the call center was open from 8:00 AM to 7:00 PM ET. Call center staffing also increased during the year to meet increasing demands as additional states transitioned onto the System. At year-end the call center employed 34 full-time professionals.



The NMLS Call Center was also engaged on a case-by-case basis to assist state agencies and licensees by making outbound calls to offer assistance in advance of state deadlines. The NMLS Call Center is funded through the NMLS processing fees and operates free of charge to System users.

Transitioning onto NMLS. About six months prior to a state's participation in NMLS, SRR begins work with a regulatory agency to develop a transition plan for the agency and its licensees, provides training, and gathers license information and other data from the agency to be included in the System and on the NMLS Resources website. Agency staff participates in a three-day NMLS classroom training session in Rockville, Maryland and are given access to an NMLS training environment. In addition, SRR developed multiple vehicles to train regulator and industry users on how to get started and proficiently use the System. The NMLS Resources website provides tools and resources including navigation guides, interactive tutorials, work flow processes, and quick guides. In 2008, SRR held over 30 live training events for industry and regulatory users which provided instruction to over 1,300 professionals. The first NMLS annual user's conference was held in February 2009.

NMLS Resources Website. The NMLS Resources website²⁶ provides users with information, tools and tips, and serves as the gateway to NMLS. The website received 700,373 visitors and 1.9 million page views in 2008. The site's resources include:

- NMLS news and alerts
- Getting started guides and workflows
- State-specific transition plans and schedules
- State-specific licensing requirement checklists
- Training materials (navigation guides, tutorials, how-to quick guides)
- Registration for training workshops
- How to get help
- Providing comment and feedback on NMLS

NMLS User's Conference. The inaugural NMLS User Conference & Training was held February 10-12, 2009 in New Orleans, Louisiana. The conference consisted of combined general sessions and regulatory and industry break out sessions. Speakers included state regulators, industry users, U.S. Department of Housing and Urban Development, NMLS call center personnel and SRR staff. The conference was attended by 155 individuals, including 49 regulators and 89 licensees. More information on the NMLS User's Conference is available on the NMLS Resource website²⁷.

2008 System Development. NMLS design and development, including the uniform application MU Forms, is accomplished through various working groups, taskforces and committees populated by CSBS and AARMR members, industry and SRR staff. Countless volunteer hours have gone into this process and have been a primary key to NMLS' on-time and on-budget launch, and relatively smooth operations.

²⁶ <http://www.stateregulatoryregistry.org/NMLS>

²⁷ <http://www.csbs.org/AM/Template.cfm?Section=Home3&Template=/CM/HTMLDisplay.cfm&ContentID=18680>

The initial system that launched in January 2008 had core filing functionality for regulators and industry users. During 2008 additional functionality was added through three major system upgrades that included data download capabilities, standard industry and regulatory reporting on NMLS data, system notifications, electronic company entitlement and license renewal capabilities. System enhancements planned for 2009 include electronic submission of financial statements, SAFE Act testing and education capabilities, consumer access, criminal background checks and modifications to the renewal process. In 2008, state regulatory agencies provided \$3.0 million in funds to pay for the development of NMLS.

Items Issued for Public Comment. Proposals issued for public comment are available on the NMLS Resources website²⁸. Two proposals were issued for comment in 2008.

On July 18, 2008 (prior to passage of the SAFE Act), SRR, on behalf of the state regulatory agencies using NMLS, issued for public comment the questions and definitions proposed to be used in the NMLS Uniform Annual Report. Comments were due by August 11, 2008. A total of eight comments were received in response to the Request for Comments. SRR reviewed the comments but placed the process of developing the NMLS Uniform Annual Report on hold until it could be revisited in the context of the SAFE Act requirement²⁹ for mortgage licensees to submit a “Mortgage Call Report” to NMLS.

On November 20, 2008, SRR, on behalf of state regulators participating in NMLS, invited public comment on the Mortgage Uniform Forms (MU Forms) and Instructions. The MU Forms are the nationwide standard of information collection for mortgage licensing and serve as the framework for records maintained in NMLS. The comment deadline was Friday, December 19, 2008. A total of 63 comments were received in response to the Request to Comments. SRR and the regulatory MU Forms Working Group reviewed the comments and proposed recommendations to the Residential Mortgage Regulatory Taskforce and the Mortgage Licensing Policy Committee. SRR expects to announce changes to the MU Forms in the second quarter of 2009.

Security, Privacy or Breach Issues. SRR did not experience any material issues related to security, privacy or information breach in 2008. NMLS’ Privacy, Data Security and Security Breach Notification Policy is available on the NMLS Resources website³⁰.

Legal Issues. SRR did not have any adverse legal issues in 2008.

NMLS Online Agreement Amendments. In an effort to streamline the flow of information between NMLS and its users, SRR amended both the *Agency and Applicant/Licensee Agreements* to specifically authorize SRR to send communications concerning NMLS to licensees using the licensee’s contact information stored in NMLS. The increased use of NMLS, coupled with the passage of the SAFE Act, has highlighted the need for efficient communication between the System and its users. The communications envisioned are relevant updates and new items about NMLS that are of interest to the users of NMLS. These communications are in addition to system-generated notifications. NMLS received approvals from state regulators to access this information so licensees currently receive these

²⁸ <http://www.stateregulatoryregistry.org/AM/Template.cfm?Section=Comments>

²⁹ Section 1505(e) of the SAFE Act stipulates that “*each mortgage Licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.*”

³⁰ http://www.stateregulatoryregistry.org/AM/Template.cfm?Section=Privacy_Policy

types of communications. SRR will not share contact information with any third parties. Section 4(E) of the Applicant/Licensee Agreement has been amended as follows: “SRR may collect and manipulate Applicant Data for the sole purpose of disseminating Applicant Data aggregated on a regional or national level. SRR may also copy, process, store and distribute Applicant Data consistent with SRR’s performance of its obligations for the state agencies participating in NMLS. Applicant grants SRR the right to use Applicant contact information from time to time for the purposes of issuing communications concerning NMLS to Applicant.”

Recipients have the ability to “opt out” of receiving these notifications.

Secure and Fair Enforcement for Mortgage License Act of 2008 (SAFE Act)

On July 30, 2008, the President signed into law the Housing and Economic Recovery Act of 2008. Title V of this Act, entitled *The Secure and Fair Enforcement for Mortgage Licensing Act of 2008* (“SAFE Act”), recognizes and builds on states efforts by requiring all mortgage loan originators to be either state-licensed or federally registered. All mortgage loan originators must be licensed or registered through the expanded Nationwide Mortgage Licensing System and Registry.

Under the SAFE Act, all states must license mortgage loan originators according to minimum standards through NMLS.

Model State Law. After becoming law, the states immediately began to work to implement the SAFE Act. A state Legislative Taskforce was established to draft a model state law for mortgage regulation and to meet the minimum standards in the SAFE Act. On August 19, 2008, a draft model state law was presented to and discussed with industry at the AARMR Annual Conference. States began introducing the proposed legislation soon after Labor Day. In 2009 states, through CSBS and AARMR, will look to develop model state SAFE Act regulations.

In late December 2008, HUD posted the following on its website:

HUD reviewed the model legislation to determine whether it meets the minimum requirements of the SAFE Act and finds that it does. State legislation that follows the provisions of the model legislation, whether by statute or regulation, will be determined to have met the applicable minimum requirements of the SAFE Act. The complete text of the model legislation, reviewed by HUD, is provided here. More information about the model legislation can be found at CSBS's [website](#). The commentary that follows presents HUD's views and interpretations of certain statutory provisions that required consideration and analysis in determining that the model legislation meets the minimum requirements of the SAFE Act.

and surety bond or recovery fund. Additionally, all states must license mortgage loan originators through NMLS.

HUD must determine that each state's mortgage loan originator licensing standards meet the federally mandated minimums and that the state is participating in NMLS.

If HUD determines that a state is not in compliance with these two items, then HUD must implement a system for all state licensed mortgage loan originators in that state. HUD's regulation under the SAFE Act would be in addition to any state-licensing requirements.

Education and Testing. The SAFE Act establishes a number of requirements for NMLS in the areas of testing and education to ensure that all state-licensed mortgage loan originators demonstrate a basic level of industry and regulatory knowledge.

Development of the testing and education policies, procedures, exams and NMLS-related functionality has involved significant input from industry and regulatory experts. Many individuals have volunteered their time, expertise and resources to participate in standing and temporary working and taskforce groups to assist in meeting the SAFE Act testing and education requirements.

NMLS is in the process of developing a test that will consist of two parts – a national component (that will test on ethics, federal laws, consumer protection, general mortgage knowledge and mortgage loan originator activities), and a state component (for each individual state that will test on state mortgage laws, regulations and definitions, consumer protection and compliance requirements). The test components are being developed by Pearson VUE in cooperation with hundreds of subject matter experts who serve on test development committees. The test components will be administered through two national testing firms, Pearson VUE and Prometric. To be licensed in a state, a mortgage loan originator must pass the national component and a state component specific to that state. The national and a dozen state components are scheduled for deployment by the end of July 2009.

NMLS is also developing policies and procedures to approve courses and course providers for 20 hours of pre-licensure education and eight hours of continuing education that is required for all state-licensed mortgage loan originators. The examination registration and scheduling, collection, retention, and dissemination of test activity, and pre-licensure and continuing education activity is scheduled to be integrated into NMLS in July 2009.

On November 13, 2008, SRR issued a Request for Proposal (RFP) for testing and education services. On January 16, 2009, SRR approved the proposal submitted by the Financial Industry Regulatory Authority, Inc. (FINRA) and its sub-contractors Pearson VUE and Prometric to implement the SAFE Act testing and education requirements. SRR posted in May 2009 education and testing policies and procedures and time lines on the NMLS Resources website.

Uniformity of State Regulation and Supervision

Since the collapse of the savings and loan industry and the evolution of the originate-to-distribute securitization mortgage finance model states have filled regulatory gaps in the system in order to protect consumers and oversee the origination process of residential mortgage loans. This was initially

accomplished through the licensing and supervision of mortgage companies and professionals and anti-predatory lending laws and regulations.

States also recognized the need for greater uniformity and coordination among regulatory agencies to supervise multi-state companies and to track unscrupulous professionals in the industry.

NMLS. Planning and creating the NMLS was a keystone in this effort to drive uniformity, increase consumer protection and enhance supervision. To participate in NMLS, each state is required to pass enabling legislation in order to use the uniform license application MU Forms and definitions and renew licensees at calendar year-end. Many other elements of NMLS, including the assignment of a unique identification number (to all licensed companies, branches and mortgage loan originators), are providing efficiency and uniformity to state licensing and regulation.

Issuance of Guidance. In 2006, CSBS and AARMR developed and encouraged its members to adopt the Guidance on Nontraditional Mortgage Product Risks (the Guidance), which mirrored guidance developed by the federal financial agencies. Again in 2007, CSBS, AARMR and the National Association of Consumer Credit Administrators released the Statement on Subprime Mortgage Lending (Subprime Statement), which also mirrored a federal statement.

Model Examinations. CSBS and AARMR developed Model Examination Guidelines (MEGS) in order to provide state regulators with a uniform set of examination standards for conducting examination reviews under the Guidance and the Subprime Statement. In late 2008, the organizations published the CSBS/AARMR Reverse Mortgage Examination Guidelines (RMEGs) as proactive measures to monitor practices related to this growing area of mortgage lending.

Cooperative Agreement. As of year end, a total of 47 states, the District of Columbia and Puerto Rico had agreed to the Nationwide Cooperative Protocol and Agreement for Mortgage Supervision. The purpose of the initiative is to assist state mortgage regulators by outlining a basic framework for the coordination and supervision of multi-state mortgage entities (those institutions operating in two or more states). A major focus of the initiative is the employment of robust examination software to be used in pre-screening the institution's entire loan portfolio to identify overall risk and potential problem areas requiring greater supervisory attention. Through a master services agreement between CSBS/AARMR and ComplianceEase[®], all state mortgage regulators, including depository regulators of institutions with mortgage portfolios, will have the ability to utilize ComplianceAnalyzer[®] and RegulatorConnect[™] web-based software for both onsite examinations and offsite monitoring.

NMLS Processing Fees

To fund development, functionality and operations, as well as to the achieve the objectives of the SAFE Act, NMLS charges processing fees for company, branch and mortgage loan originator licenses managed in the System. There are three basic fees, as follows:

- (1) Initial Set-up Fee. This \$100/\$20/\$30 fee is charged each time a company (Form MU1), branch (Form MU3), or mortgage loan originator (Form MU4), respectively, uses NMLS to transition an existing license or to apply for a new license in a participating state. The Initial Set-up Fee is "per state, per license."

(2) Annual Processing Fee. This \$100/\$20/\$30 fee is charged annually at the time of renewal when a company, branch, or mortgage loan originator, respectively, renews a license in a participating state. This fee is a “per state/per license” fee.

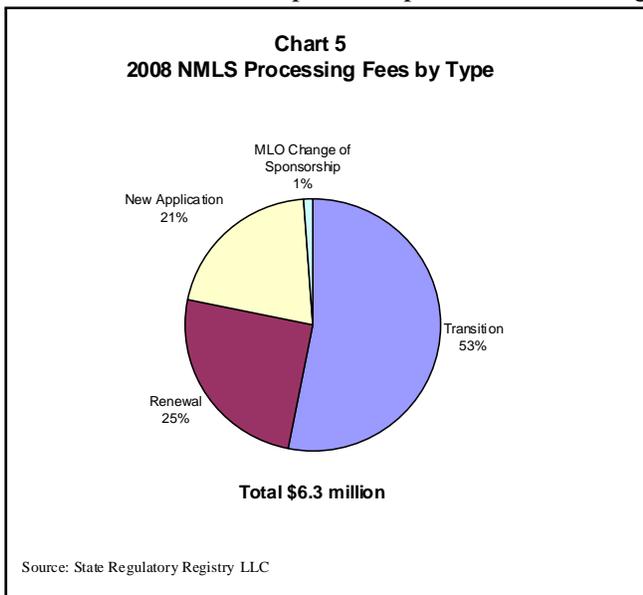
(3) Mortgage Loan Originator Transfer fee. This \$30 fee is charged each time the NMLS processes a company’s request to have a mortgage loan originator’s license affiliated with that company. In essence, this fee is charged each time a mortgage loan originator changes employment. This fee is a “per state/per license” fee.

	<u>2008</u>	<u>2007</u>
Total assets	\$10,410	\$5,409
Mortgage licensing system, net ⁶	8,312	5,197
Lines of credit	5,705	1,999
Retained earnings	2,210	2,857
Revenues	9,605	3,097
Expenses	10,252	1,253
Net income (12 months)	(647)	1,844

NMLS processing fees collected in 2008 by type are provided in Chart 5. Other NMLS services, such as the call center, system access, updating a licensee’s record and reports are provided at no charge to the user. NMLS processing fees are paid for by the licensee or the state and are used primarily for NMLS annual operating expenses. The NMLS processing fees are reviewed annually and set by the SRR Board of Managers. The fees are provided on SRR’s website³².

State Regulatory Registry Financial Report

Highlights of SRR’s audited financial statements as of December 31, 2007 and 2008 are shown in Table 3. SRR’s \$10.4 million in 2008 total assets nearly doubled from 2007 as it continued to invest in the expansion and enhancement of NMLS³³. Borrowings almost tripled in 2008 to fund both operations and NMLS development costs.



Total SRR 2008 revenues of \$9.6 million were derived from \$6.3 million in NMLS processing fees and \$3.3 million in development and operating support from the states. NMLS operating expenses totaled \$10.3 million, resulting in a \$647,000 net loss for the year. In 2008, state regulatory agencies provided

³² (<http://www.stateregulatoryregistry.org>)

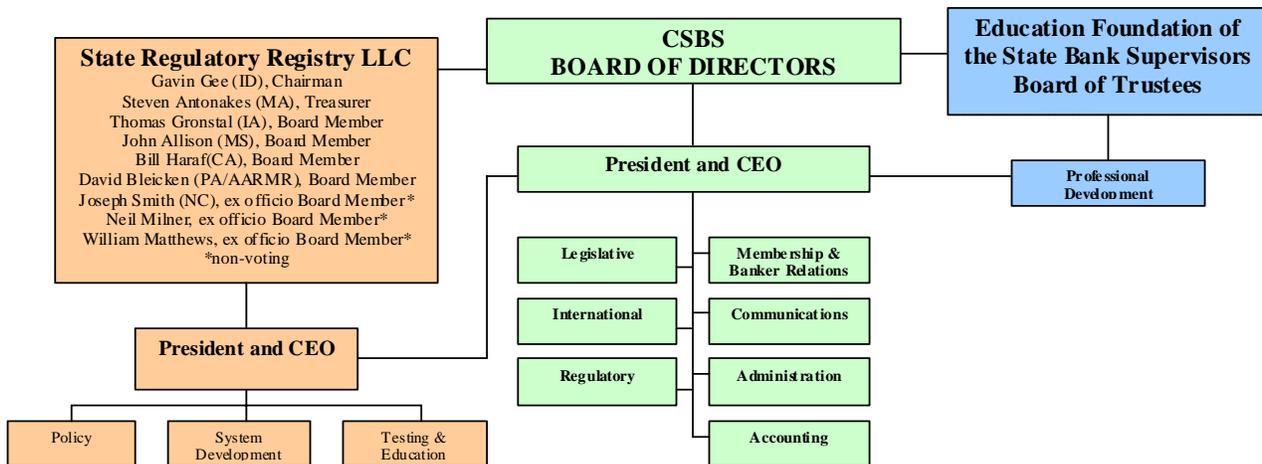
³³ Expenses related to the development of NMLS are capitalized and amortized over a 7-year period. This \$8.3 million fixed asset is net of depreciation.

\$3.0 million in funds that were used to pay for the development of NMLS. Total state contributions for NMLS development over the past several years is \$7.1 million. NMLS collected and disbursed over \$30 million on behalf of the states participating in NMLS.

Questions and Comments

Comments and questions about SRR, its Annual Report, or NMLS should be directed to the NMLS website³⁴, “Got Feedback?”.

**CONFERENCE OF STATE BANK SUPERVISORS
ORGANIZATION CHART**



³⁴ <http://www.stateregulatoryregistry.org/NMLS/AM/Template.cfm?Section=Feedback>

