

Secure and Fair Enforcement for Mortgage Licensing Act

Report to Congress
November 2010



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Message from the Secretary



I am pleased to present to Congress the second annual report of the Department of Housing and Urban Development on the status of implementation of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). This report, which covers the period of August 1, 2009, through July 30, 2010, provides an update on state legislative efforts to implement the nationwide mortgage licensing and registration system mandated by the SAFE Act, and activities in support of the Act's implementation. In particular, this report details efforts by HUD, in partnership with governments of U.S. states and territories, the Conference of State Bank Supervisors, and the American Association of Residential Mortgage Regulators, to meet the Act's goals of reducing mortgage fraud and enhancing consumer protections nationwide.

Nationwide implementation of the SAFE Act is a key component of HUD's efforts to improve consumer protections in the mortgage market. As such, I am pleased to announce that as of June 30, 2010, all 50 states, the District of Columbia, the Virgin Islands, and Guam have enacted legislation establishing programs for the licensing and registration of residential mortgage loan originators utilizing the Nationwide Mortgage Licensing System and Registry. This achievement is attributable to the efforts of state banking commissioners and state mortgage regulators, and HUD staff working with them, to ensure that the Act's provisions are successfully implemented throughout the Nation.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law on July 21, 2010, transfers the Act's consumer protection functions and responsibilities to the new Bureau of Consumer Financial Protection being established in the Federal Reserve System. I welcome this new law and will work closely with the Secretary of the Treasury to ensure a smooth transition of SAFE Act functions and personnel from HUD to the new Bureau.

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

Executive Summary

This is HUD's second annual SAFE Act report to Congress. Since the last report (<http://www.hud.gov/offices/hsg/ramh/safe/rptcongress.cfm>), HUD has taken important steps in fulfilling its oversight responsibilities of the SAFE Act's licensing requirements. These include:

- **Proposed Rule:** HUD published a proposed rule in the Federal Register on December 15, 2009, describing HUD's interpretation and clarification of various elements of the SAFE Act and explaining HUD's enforcement authority. HUD received more than 5,300 comments on its proposed rule, the majority of which were related to seller-financed property sales. HUD has undertaken a careful review of all of these comments and is working diligently in developing a final rule that takes these comments into consideration.
- **Reviews of State Laws:** HUD staff completed preliminary reviews of the laws enacted by the states and territories to implement the SAFE Act's requirements. As of the date of this report, all U.S. states, the District of Columbia, the Virgin Islands, and Guam have passed SAFE Act legislation. Puerto Rico, American Samoa, and the Commonwealth of Northern Mariana Islands have not yet enacted implementing legislation. HUD staff is working closely with banking regulators and legislators in all three jurisdictions to assist them in addressing the unique challenges¹ faced by each of them.

HUD staff has conducted a preliminary review of individual state legislation enacted by the states and territories (states). HUD program specialists have been assigned specific states to act as points of contact for quickly resolving licensing issues and answering questions that state regulators may have regarding licensing issues in their jurisdiction. This has resulted in close communications between the regulatory authority in each jurisdiction and HUD.

Communications: HUD program specialists and attorneys review state legislation with the regulatory authority of each state for the purpose noted above. In addition, HUD maintains an email address (SAFEprogram@hud.gov) for answering public and mortgage industry inquiries. The email box is monitored daily and HUD's SAFE Act Office responds to each individual query received. The SAFE Act Office conducts weekly conference calls with representatives of the Nationwide Mortgage Licensing System and Registry (NMLSR) to discuss common concerns, and to receive briefings on state licensing activities throughout

¹ For example, American Samoa was hit by a devastating tsunami in September 2009 that delayed the territory's ability to pass legislation implementing the SAFE Act's requirements; and the Commonwealth of the Northern Mariana Islands has a number of unique tribal laws relating to the sale and transfer of land that have delayed its efforts to enact the SAFE Act's requirements.

the Nation. On an as-needed basis, the SAFE Act Office also provides outreach through webinars and conference calls with trade associations and stakeholders to explain HUD's role in enforcing and regulating residential mortgage loan originator (MLO) licensing activities under the SAFE Act.

Acknowledgements

This report was prepared by staff from U.S. Department of Housing and Urban Development's Office of Regulatory Affairs and Manufactured Housing, and reflects contributions of staffs of the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

Table of Contents

Message from the Secretary	iii
Executive Summary	v
Acknowledgements	vii
Introduction	1
Chapter 1: Establishing a National Framework	4
HUD’s Office of Regulatory Affairs and Manufactured Housing	4
CSBS and AARMR	8
Federal Banking Agencies	9
Chapter 2: Status Report on the Implementation Process	10
NMLSR	10
SAFE ACT Required Functionality	11
State Mortgage Loan Originator Licensing Programs	12
Federal Mortgage Loan Originator Registration Program	15
Appendix A: HUD’s Proposed Rule	
Appendix B: 2009 SRR/NMLSR Report to Congress	

Introduction

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) was signed into law on July 30, 2008, as part of the Housing and Economic Recovery Act of 2008 (HERA)². Section 1516 of the SAFE Act directs the Secretary of the Department of Housing and Urban Development to submit an annual report to Congress on the effectiveness of the SAFE Act, “including legislative recommendations for strengthening consumer protections, enhancing examination standards, streamlining communication between all stakeholders involved in residential mortgage loan origination and processing, and establishing performance based bonding requirements for mortgage loan originators or institutions that employ such brokers.” This is the second report to Congress prepared pursuant to that requirement.³

The SAFE Act was passed to increase uniformity, reduce regulatory burden, enhance consumer protections, and reduce fraudulent practices in the residential mortgage market by encouraging the states and territories (states),⁴ working with the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR), to establish a national framework for the licensing, registration, and supervision of all individuals engaging in the business of a residential mortgage loan originator (MLO) in the United States. The general purpose of the SAFE Act is to establish a more uniform national framework to ensure that individuals engaging in the business of a residential mortgage loan originator will act in the best interests of consumers and otherwise promote responsible behavior in the residential mortgage market.

The national framework established by the SAFE Act is composed of three separate but equally important parts: (1) distinct state licensing and oversight programs, (2) a federal registration system, and (3) an Internet-based Nationwide Mortgage Licensing System and Registry (NMLSR).

To establish the first part of the national framework, the SAFE Act encourages each state to enact by law or regulation a program for the licensing, registration, and supervision of individuals engaged in the business of an MLO for loans secured by properties located within the state. Each state is free to develop its own program for licensing, registering, and supervising MLOs within its borders, provided that the state’s program meets all of the minimum requirements of the SAFE Act. If HUD determines that a state is not operating a fully SAFE

² Public Law 110-289, Division A, Title V, §§ 1501-1517, 122 Stat. 2654, 2810-2824 (July 30, 2008), codified at 12 U.S.C. 5101-5116.

³ HUD’s 2009 Report to Congress and additional information on the SAFE Act can be found on the Department’s website at www.hud.gov/safe.

⁴ The SAFE Act at § 1503(10), 12 U.S.C. § 5102(10) (“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.”).

Act-compliant program following the implementation deadline, however, HUD is required under the SAFE Act to establish its own program for licensing, registering, and supervising MLOs in that state.

To establish the second part of the national framework, the SAFE Act requires the federal banking agencies,⁵ through the Federal Financial Institutions Examination Council (FFIEC) and the Farm Credit Administration, to develop and maintain a federal registration system for registering mortgage loan originators employed by certain institutions regulated by a federal banking agency or by institutions regulated by the Farm Credit Administration. Moreover, the SAFE Act requires federal registration, and state licensing and registration, to be accomplished through the same online registration system, the NMLSR. In connection with the federal registration of MLOs, federal banking agency- and Farm Credit Administration-regulated institutions must at a minimum ensure that the MLOs that they regulate are properly registered in the NMLSR and that the MLOs furnish the NMLSR with all required information concerning their identity. The required information includes fingerprints for submission to the Federal Bureau of Investigation (FBI) and any other relevant government agency for a state and national criminal history background check, as well as personal history and experience, including authorization for the NMLSR to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

To establish the third part of the national framework, the SAFE Act encourages CSBS and AARMR to develop the NMLSR, which has been developed as a single web-based system that connects and provides interoperability to all of the distinct state and federal MLO licensing and oversight programs. To ensure interoperability and interconnectedness throughout the national framework, Congress authorized CSBS and AARMR, subject to oversight by HUD, to assign unique identifiers to MLOs, develop standardized licensing forms and standardized MLO exams, and approve educational courses and test providers. CSBS is authorized under the SAFE Act to serve as a channeling agent of the states for requesting and distributing information between the U.S. Department of Justice and appropriate state agencies. However, HUD is required to establish and maintain a comprehensive licensing, supervisory, and tracking system for MLOs if the NMLSR fails to develop and maintain a system that meets the requirements and purposes of the SAFE Act.

When fully implemented, this new national framework for the licensing, registration, and supervision of MLOs will improve the flow of information between regulators, provide increased accountability and tracking of MLOs, and provide consumers with easily accessible information regarding the employment and adjudicated disciplinary history of each individual mortgage loan originator. This new framework represents a significant step forward in the Federal

⁵ The SAFE Act at § 1503(1), 12 U.S.C. § 5102(1) (“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.”).

Government's efforts to enhance consumer protection, reduce fraud, and return credibility and integrity to the Nation's mortgage lending market.

This second report to Congress was prepared by HUD's Office of Regulatory Affairs and Manufactured Housing and includes information and data provided by CSBS and AARMR. Chapter 1 provides an overview of the processes by which each of the three main groups tasked with responsibilities under the SAFE Act are working together to establish a national framework for licensing and registering MLOs. Chapter 2 provides a status report on the SAFE Act implementation process and where the states and NMLSR are in terms of meeting the minimum requirements of the SAFE Act.

Chapter 1: Establishing a National Framework

Administrative and oversight authority for licensing and registration of state-licensed loan originators under the SAFE Act currently lies with HUD, which must ensure that the states, CSBS, AARMR, and the NMLSR are all adequately performing their individual responsibilities under the SAFE Act. If HUD determines that a state fails to carry out its responsibilities under the SAFE Act, or the NMLSR fails to meet the SAFE Act's requirements for establishing a comprehensive licensing, supervisory, and tracking system for loan originators, HUD is required to step in and perform the nonparticipating entity's role to ensure continuity in the national framework for licensing, registering, and supervising MLOs operating in the United States.

NOTE: On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) into law. This important new law transfers functions, authorities, and staff related to the SAFE Act to the new Bureau of Consumer Financial Protection being established in the Federal Reserve System. Under the Dodd-Frank Act, following transfer of the function, future SAFE Act reports will be the responsibility of the Bureau. HUD will work with Administration officials to efficiently transfer SAFE Act functions, authorities, and staff to the Bureau.

HUD's Office of Regulatory Affairs and Manufactured Housing

HUD's oversight authority for the SAFE Act requires HUD to take an active role in the national implementation process, which involves monitoring states and the NMLSR to ensure that the SAFE Act requirements are being met. To carry out these ongoing responsibilities, HUD established a SAFE Act Office within the Office of Regulatory Affairs and Manufactured Housing to lead HUD's efforts to implement the SAFE Act. The SAFE Act Office is comprised of program specialists and other technical experts. Throughout the past year, SAFE Act Office staff met and communicated regularly with state banking and licensing regulators, CSBS, and AARMR. HUD also worked to facilitate the passage and implementation of SAFE Act-compliant mortgage loan originator licensing laws in all 50 states and U.S. territories (collectively, "states").

On December 15, 2009, HUD published a proposed rule that would codify HUD's responsibilities under the SAFE Act and clarify minimum standards that the SAFE Act requires for systems used in licensing state-licensed loan originators. (See 74 FR at 66548.) The proposed rule was also intended to solicit public comment that would help HUD clarify or interpret certain statutory provisions that pertain to the scope of the SAFE Act's licensing requirements, and other requirements that pertain to the implementation, oversight, and enforcement responsibilities of the states. In addition, the proposed rule provides the procedure that HUD would use to determine whether a state's licensing and registration system is SAFE Act-compliant, the actions HUD would take if HUD determines that a state has not established a SAFE Act-compliant licensing and registration system or that the NMLSR is not SAFE Act-compliant, the minimum requirements for the administration of the NMLSR, and HUD's enforcement authority if it operates a state licensing system in a particular state.

On February 17, 2010, HUD published a notice extending the public comment period until March 5, 2010, due to severe inclement weather conditions in Washington, DC, and the northeastern United States that resulted in closures of government offices and private organizations for several days and prevented many members of the public from submitting public comments by the original comment deadline.

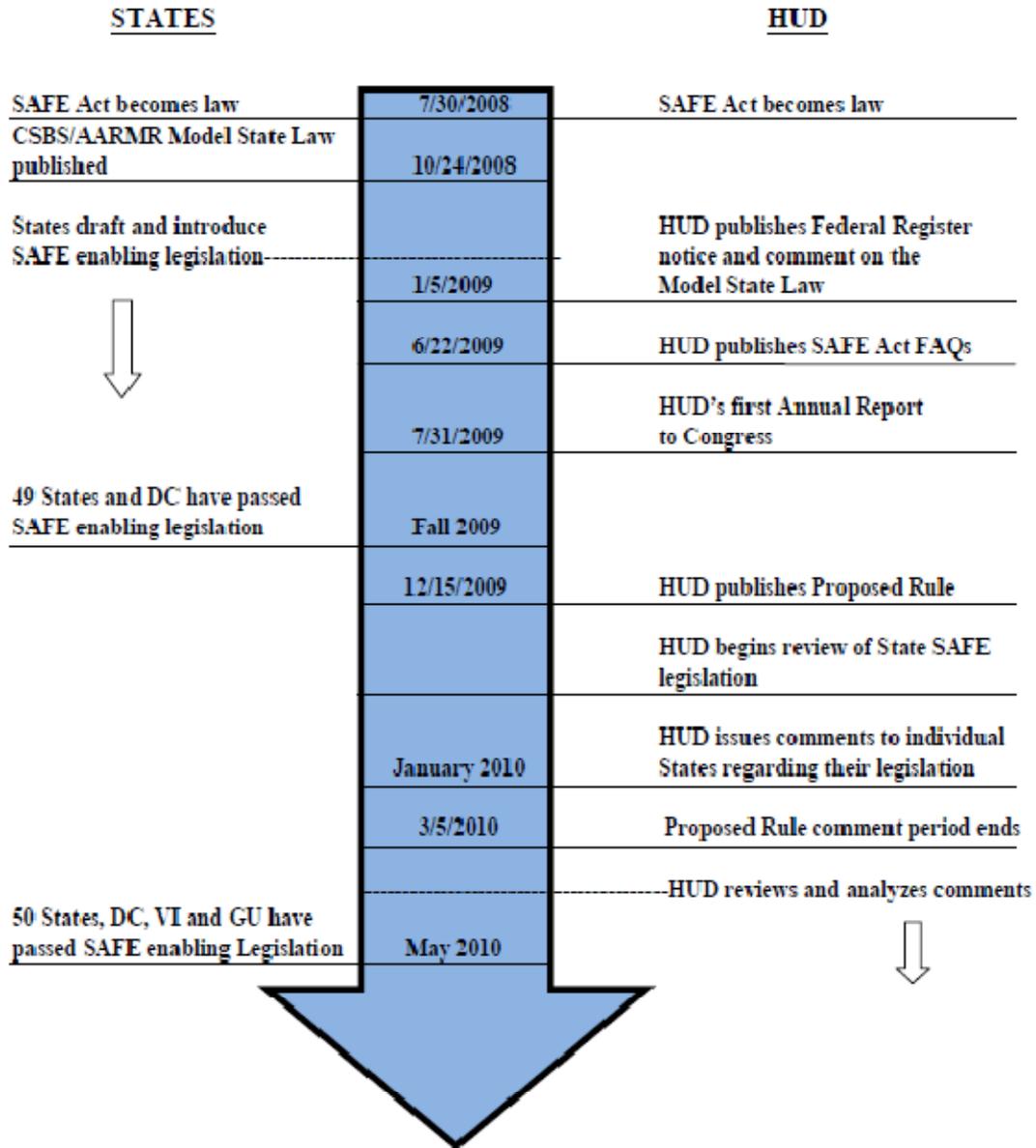
In conjunction with the development of HUD's proposed rule, the SAFE Act Office reviewed each state's MLO licensing statute to compare it to the SAFE Act and the proposed rule. The SAFE Act Office, with input from HUD's Office of General Counsel, conducted a preliminary review of each state's MLO licensing law and provided each state with a side-by-side comparison chart to informally point out areas where the state licensing law appeared to differ from the SAFE Act's requirements. In addition to assisting states in comparing their own laws with the SAFE Act and HUD's proposed rule, states were encouraged to provide more comprehensive feedback during the public comment period for the rule.

The preliminary reviews of states' MLO licensing statutes also allowed the SAFE Act Office to open informal discussions with state regulators regarding implementation of each state's SAFE Act laws. These discussions, in turn, led to a greater understanding of state regulatory structures, enabling the Office to give more constructive feedback to all the states. Similarly, these discussions informed the Office's discussions with CSBS about establishing functionalities within the NMLSR that are necessary to meet the unique licensing needs of the states, while maintaining uniformity throughout the system. These outreach efforts have enabled states to work on their own and collectively to submit more comprehensive and fully informed responses to HUD's proposed rule, which will ultimately assist HUD in preparing a better final rule.

The public comment period on HUD's proposed rule closed on March 5, 2010. More than 5,300 comments were received from members of the public, including individuals; state regulatory agencies; other units of state and local government; industry associations; mortgage

lending institutions; mortgage loan servicers; nonprofit housing counseling, lending, and community development organizations; housing finance agencies; broker-dealers that employ financial advisors; manufactured housing retailers, lenders, and community owners; and attorneys and law firms. An overwhelming majority of the comments received were from individuals, companies, or organizations seeking blanket exemptions from the SAFE Act's licensing requirements. HUD has undertaken a careful review of the comments and is working diligently in developing a final rule that takes them into consideration.

State SAFE Legislative Timeline



CSBS and AARMR

The SAFE Act encourages CSBS and AARMR to establish and maintain the NMLSR as a central repository for information on all state and federally regulated residential mortgage loan originators operating in the United States. The SAFE Act outlined 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 forms and administering qualified written tests and approving test providers;
- Reviewing and approving pre-licensure and continuing education courses;
- Developing form and content requirements for mortgage licensee reports of condition (mortgage call reports);
- Providing public access to licensing information; and
- Collecting and distributing federal and state consumer complaints.

The State Regulatory Registry LLC (SRR) is a wholly owned subsidiary of CSBS and operates the NMLSR pursuant to the requirements set forth under the SAFE Act. SRR is governed by a six-member Board of Managers comprised of state banking commissioners and a representative of AARMR. The SRR Board of Managers is responsible for development, operations, and policy matters concerning NMLSR.

CSBS and AARMR together, working with their state agency members, developed the NMLSR and designed and implemented its policies, procedures, and functionalities. At the end of 2009, SRR employed 20 full-time professionals in Washington, DC, who work under the direction of the SRR Board of Managers to develop and operate the NMLSR, administer the testing and education programs, and support working groups of state regulators and industry representatives to develop new NMLSR policies. Additionally, SRR contracts with a number of firms to deliver various portions of NMLSR functionality.

Federal Banking Agencies⁶

The SAFE Act requires the federal banking agencies and the Farm Credit Administration (FCA) to develop and maintain a system for registering mortgage loan originators employed by certain institutions that they regulate. The SAFE Act specifically prohibits an individual from engaging in the business of a residential mortgage loan originator without first obtaining and maintaining annually: (1) a registration as a registered mortgage loan originator and a unique identifier if employed by an FCA- or federal banking agency-regulated institution (federal registration); or (2) a license and registration as a state-licensed mortgage loan originator and a unique identifier. The SAFE Act requires that federal registration and state licensing and registration must be accomplished through the same online registration system, the NMLSR.

In connection with federal registration, the federal banking agencies, at a minimum, must ensure that the NMLSR is furnished with information concerning the mortgage loan originator's identity, including: (1) fingerprints for submission to the FBI and any other relevant governmental agency for a state and national criminal history background check; and (2) personal history and experience, including authorization for the NMLSR to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.⁷

The federal banking agencies' registration system for mortgage loan originators was established by final rule published on July 28, 2010, which took effect on October 1, 2010.⁸ (See 75 FR at 44656.)

⁶ The Dodd-Frank Act (Pub. L. 111-203) signed by President Obama on July 21, 2010, transfers functions, authorities, and staff related to the SAFE Act to the Bureau being established in the Federal Reserve System and amends the SAFE Act to give the Bureau one year from the date of enactment of the Dodd-Frank Act to establish a registry for employees of depository institutions, their subsidiaries that are regulated by a federal banking agency, and institutions regulated by the Farm Credit Administration.

⁷ The SAFE Act at § 1507(a), 12 U.S.C. § 5106(a).

⁸ Compliance with the registration requirements established by the agencies is required by the end of the 180-day period that begins on the date of a subsequent notice to be published by the agencies to announce that the NMLSR is accepting initial registrations.

Chapter 2: Status Report on the Implementation Process

Nationwide implementation of the SAFE Act is a key component of the overall efforts of both the Administration and HUD to improve consumer protections in the mortgage market. Since the last Report to Congress was submitted in July 2009, substantial progress has been made by states in implementing the SAFE Act's requirements and carrying out its purposes and objectives. HUD is currently working on its final rule on the SAFE Act, and HUD continues to encourage all states to begin operating their own SAFE Act-compliant MLO licensing programs before the end of the year. This chapter provides a snapshot of the progress of states and the NMLSR in establishing the national framework for the licensing, registration, and supervision of individuals engaging in the business of residential mortgage loan origination.

NMLSR

The NMLSR is fully operational and is currently being used by 48 states to license MLOs. Most of the remaining states are scheduled to transition onto the NMLSR in phases throughout the rest of the 2010 Calendar Year. As of the end of June 2010, more than 98,900 MLO licenses had been issued by state agencies through the NMLSR, and another 76,544 MLO license applications were pending approval. Although not required by the SAFE Act, the NMLSR offers states the ability to license and register mortgage companies and branch offices through the system, in addition to licensing individual MLOs. As of the end of June 2010, more than 268,000 unique entities (companies, branch offices, or individuals) had registered in the NMLSR, and more than 38,000 entity licenses had been issued to MLO companies or branch offices.

As an additional service, the SRR provides training to state agency personnel prior to their using the NMLSR. Training includes classroom training and webinars as system functionality is enhanced, as well as refresher training. SRR's classroom-based training includes 3 days of classroom training held at various locations. As of the end of June 2010, the SRR has trained 354 state agency employees on how to use the NMLSR.

In addition to training state regulators, the SRR provides training to industry participants including state-licensed companies and MLOs. Such training is provided via webinars and in-person instruction organized through state agencies and state trade associations. As of the end of June 2010, the SRR had conducted 48 industry training sessions on how to use the NMLSR.

SAFE Act Required Functionality

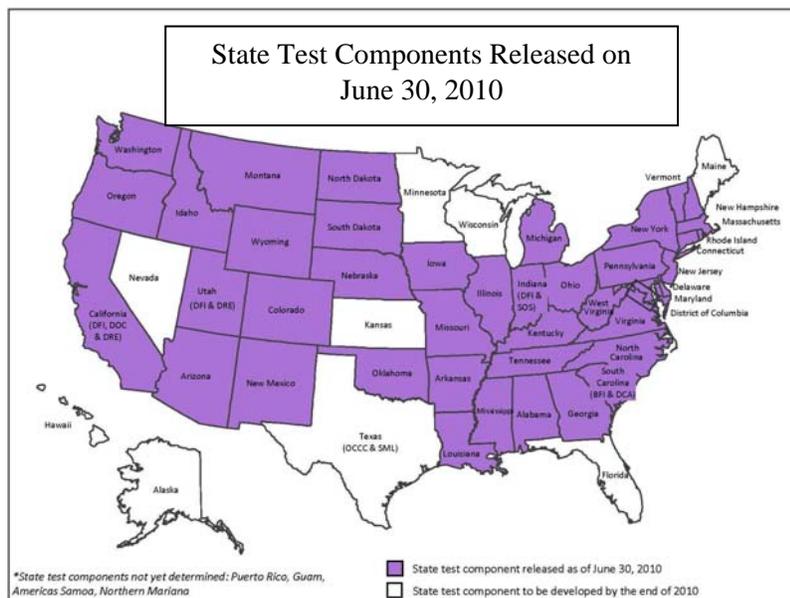
The SRR is continuing to work on several upgrades to the NMLSR that will expand the system’s capabilities and expects to bring the system into full compliance with all SAFE Act requirements by the end of Calendar Year 2011. Listed below is information on where the SRR is in implementing each of the SAFE Act’s minimum requirements for the NMLSR.

Issuance of Unique Identifiers: The NMLSR currently issues a unique identifier to each individual mortgage loan originator and each mortgage company registered in it.

Fingerprint Processing and Background Checks: Under the SAFE Act, all mortgage loan originators must provide fingerprints to the NMLSR for the purpose of undergoing a criminal history background check. In January 2010, the NMLSR implemented a comprehensive process that includes electronic fingerprint capture, fingerprint routing to law enforcement, receipt of criminal history background checks, attachment of the background investigation to the mortgage loan originator’s record in the NMLSR, and retention of the mortgage loan originator’s fingerprint images for future use as needed. As part of this comprehensive process, more than 850 sites nationwide now have the capability of capturing MLO applicants’ fingerprints electronically to initiate a criminal background check in connection with a license application.

Review and Approval of Pre-Licensure and Continuing Education Courses: As of June 15, 2010, NMLSR had approved 210 SAFE Act course providers and more than 600 courses, and over one million hours of education had been delivered nationwide. NMLSR continues to work with course providers to increase the number of courses available, especially continuing education courses, and is working to solicit new organizations to become approved education providers. NMLSR also has initiated a multi-tiered auditing process to ensure that approved course providers are complying with standards of conduct and delivering the type of quality education that the mortgage industry expects and deserves.

Development of a Qualified Written Test and Approval of Test Providers: The SAFE Act-required MLO test includes two components, a National Component and a Unique State Component. By the end of June 2010, the National Component and a total of 42 Unique State Components were available for candidates to take. Ten additional Unique State Test Components are anticipated to be released by the end of December 2010. An



applicant wishing to satisfy the SAFE test requirements for licensure in any given state or jurisdiction must answer at least 75 percent of the questions correctly on both the National and the Unique State Test Components. An MLO who already holds a SAFE Act-compliant license in one state and seeks licensure in additional ones must pass the Unique State Component test in each additional state in which he or she wants to be licensed.

Consumer Access to Information: Under the SAFE Act, NMLSR is expected to provide consumer access to the license status and publicly adjudicated enforcement actions taken against each MLO. In January 2010, NMLSR launched NMLS Consumer Access, a fully searchable website (<http://www.nmlsconsumeraccess.org/>) that allows the public to view the license status of companies, branch offices, and individuals registered in the NMLSR and/or licensed by state regulatory agencies through the NMLSR. The second phase of the consumer access implementation will add public access to information regarding adjudicated disciplinary and enforcement actions and is scheduled to be available in 2011.

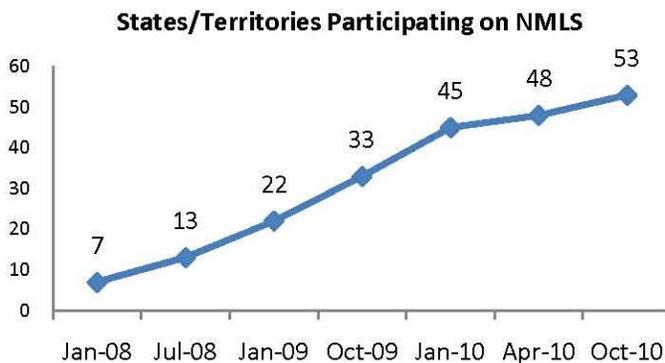
Annual Renewals for State-Licensed Loan Originators: Under the SAFE Act, states must ensure that each MLO meets the minimum standards for licensure and education each year to remain licensed. State regulatory agencies accomplish this through the NMLSR when a mortgage loan originator renews his/her license at calendar year-end.

Reports of Condition: Under the SAFE Act, the NMLSR must develop a report of condition, or a mortgage call report, to be submitted by the licensed MLO. A discussion draft of a NMLSR mortgage call report was issued by the SRR for public comment earlier this year, and the call report form is expected to be implemented in 2011.

State Mortgage Loan Originator Licensing Programs

Working together on a cooperative multistate basis, the states, with help from HUD, CSBS, and AARMR, have made significant progress toward implementing SAFE Act-compliant laws over the past year. As of June 30, 2010, 53 states (the traditional 50, plus the District of Columbia, the Virgin Islands, and Guam) had enacted legislation establishing programs for the licensing and registration of MLOs utilizing the NMLSR. This progress can be largely attributed to the extraordinary efforts of state banking commissioners and mortgage regulators over the past several years to ensure that the SAFE Act's provisions are successfully implemented.

It also is worth noting that states have been organizing and coordinating



Source: State Regulatory Registry LLC

uniform standards among themselves, and in concert with the SRR Board of Managers, for many of the activities necessary to successfully implement uniform SAFE Act programs nationwide. For example, the states have raised and suggested standards for multi-state examinations applicable to MLOs who operate in multiple states.

State Mortgage Loan Originator Licensing Laws			
State	Bill No.	Date Enacted	Mortgage Loan Originator Licensing Statute[s]
Alabama	SB 249	5/21/2009	ALA. CODE §§ 5-26-1 et seq.
Alaska	HB 221	6/16/2009	ALASKA STAT. §§ 06.60.010 et seq.
American Samoa			
Arizona	HB 2143	7/13/2009	ARIZ. REV. STAT. §§ 6-991 et seq.
Arkansas	HB 1881	4/1/2009	ARK. CODE ANN. §§ 23-39-501 et seq.
California	SB 36	10/11/2009	CAL. BUS. & PROF. CODE §§ 10166.01 et seq. CAL. FIN. CODE. §§ 22100 et seq.
Colorado	HB 1085	5/21/2009	COLO. REV. STAT. §§ 12-61-901 et seq.
Connecticut	SB 948	7/9/2009	CONN. GEN. STAT. §§ 36a-485 et seq.
Delaware	SB 73	7/6/2009	DEL. CODE ANN. tit.5, § 2401 et seq.
District of Columbia	B17-1021 B18-133	1/12/2009 5/21/2009	D.C. CODE §§ 26-1101 et seq.
Florida	SB 2226	6/29/2009	FLA. STAT. §§ 494.001 et seq.
Georgia	HB 312	4/29/2009	GA. CODE ANN. §§ 7-1-1000 et seq.
Guam	SB 351-30	5/25/2010	GUAM CODE ANN. tit. 18, §§ 36301 et seq.
Hawaii	SB 1218 SB 2603	7/16/2009 5/7/2010	HAW. REV. STAT. §§ 454F et seq.
Idaho	HB 169	4/7/2009	IDAHO CODE ANN. § 26-31 et seq.
Illinois	HB 4011	7/31/2009	205 ILL.COMP. STAT. 635/1-1 et seq.
Indiana	HB 1646	7/1/2009	IND. CODE §§ 23-2-54 et seq.
Iowa	SF 355	4/15/2009	IOWA CODE § 535D.1 et seq.
Kansas	SB 240	3/27/2009	KAN. STAT. ANN. §§ 16a-1-301 et seq. KAN. STAT. ANN. §§ 9-2201 et seq.
Kentucky	HB 106	3/27/2009	KY. REV. STAT. ANN. §§ 286.8-010 et seq.
Louisiana	HB 810	7/10/2009	LA. REV. STAT. ANN. §§ 6:1081 et seq.
Maine	SP 0523	6/11/2009	ME. REV. STAT. ANN. tit. 9-A, §§ Art. 13 et seq.
Maryland	HB 292 SB 269	4/14/2009	MD. CODE ANN., FIN. INST. §§ 11-601 et seq. MD. CODE ANN., FIN. INST. §§ 11-501 et seq.
Massachusetts	H 4178	7/31/2009	MASS. GEN. LAWS, ch. 255F §§ 1 et seq.
Michigan	SB 462	7/28/2009	MICH. COMP. LAWS §§ 493.131 et seq.
Minnesota	S.F. No. 2510	5/12/2010	MINN. STAT. §§ 58A.01 et seq.
Mississippi	SB 2983	4/15/2009	MISS. CODE ANN. §§ 81-18-1 et seq.
Missouri	HB 382	7/8/2009	MO. REV. STAT. §§ 443.701 et seq.
Montana	SB 351	4/20/2009	MONT. CODE ANN. §§ 32-9-101 et seq.
Nebraska	LB 328	4/22/2009	NEB. REV. STAT. §§ 45-701 et seq.
Nevada	AB 523	6/8/2009	NEV. REV. STAT. §§ 645B.010 et seq.
New Hampshire	HB 610	7/3/2009	N.H. REV. STAT. ANN. §§ 397-A et seq.
New Jersey	AB 3816	5/4/2009	N.J. STAT. ANN. §§ 17:11C-1 et seq.
New Mexico	SB 342	4/6/2009	N.M. STAT. §§ 58-21B-1
New York	AB 6924	7/11/2009	N.Y. BANKING LAW §§ 599-a et seq.
North Carolina	HB 1523	7/11/2009	N.C. GEN. STAT. §§ 53-244 et seq.
North Dakota	SB 2160	4/9/2009	N.D. CENT. CODE §§ 13-10-01 et seq.
Northern Mariana Islands			
Ohio	SB 124	12/29/2009	OHIO REV. CODE ANN. §§ 1322.01 et seq.

Oklahoma	SB 1062	5/12/2009	OKLA. STAT. tit. 59, §§ 2095 et seq.
Oregon	HB 2189	7/30/2009	OR. REV. STAT. §§ 86A.200 et seq.
Pennsylvania	HB 1654	8/5/2009	7 PA.CON.S. STAT. §§ 6101 et seq.
Puerto Rico			
Rhode Island	SB 461	7/16/2009	R.I. GEN. LAWS §§ 19-14.10-1 et seq.
South Carolina	SB 673	6/3/2009	S.C. CODE ANN. §§ 37-22-110 et seq.
South Dakota	HB 1060	3/16/2009	S.D. CODIFIED LAWS §§ 54-14-12 et seq.
Tennessee	HB 2316	6/23/2009	TENN. CODE ANN. §§ 45-13-101 et seq.
Texas	HB 10	6/19/2009	TEX. FIN. CODE ANN. §§ 180.001 et seq.
Utah	SB 31 HB 286	3/20/2009	UTAH CODE ANN. §§ 61-2c-101 et seq. UTAH CODE ANN. §§ 70D-3-101 et seq.
Vermont	HB 171	5/21/2009	VT. STAT. ANN. tit. 8, §§ 2200 et seq.
Virgin Islands	SB 28-0106	12/02/2009	V.I. CODE ANN. tit. 9, §§ 20-382 et seq.
Virginia	SB 1171	3/27/2009	VA. CODE ANN. §§ 6.1-431.1 et seq.
Washington	SB 1749 HB 1621	5/18/2009 4/17/2009	WASH. REV. CODE §§ 19.146.005 et seq. WASH. REV. CODE §§ 31.04.015 et seq.
West Virginia	SB 532 HB 4285	5/8/2009 4/1/2010	W.VA. CODE §§ 31-17A-1 et seq.
Wisconsin	SB 62	2/19/2009	WIS. STAT. §§ 224.71 et seq.
Wyoming	HB 169	3/12/2009	WYO. STAT. ANN. §§ 40-14-640 et seq. WYO. STAT. ANN. §§ 40-23-101 et seq.

Federal Mortgage Loan Originator Registration Program

As noted earlier, on July 28, 2010, the federal banking agencies and the FCA issued a Final Rule (75 FR 44656) to implement the SAFE Act’s federal registration requirements. The SAFE Act requires an employee of a bank, savings association, credit union or Farm Credit System (FCS) institution and some of their subsidiaries regulated by a federal banking agency (collectively known as Agency-regulated institutions) and those that act as a residential mortgage loan originators to register with the NMLSR, obtain a unique identifier, and maintain this registration. The final rule further provides that Agency-regulated institutions must require their employees who act as residential mortgage loan originators to comply with the SAFE Act’s requirements to register and obtain a unique identifier, and to adopt and follow written policies and procedures designed to assure compliance with these requirements.

The federal banking agencies, through the FFIEC, and the FCA are now working with CSBS to modify the NMLSR so that it can accept registrations from mortgage loan originators employed by Agency-regulated institutions. The existing registration system does not currently support the federal registration of Agency-regulated institution employees. Accordingly, the system must be modified to accommodate the differences between the requirements for state licensing/registration and federal registration. It also must be modified to accommodate the migration of an individual between the state licensing and registration, and the federal registration regimes or the dual employment of an individual by both an Agency-regulated

institution and a non-Agency-regulated institution.⁹ These modifications and enhancements require careful analysis and raise complex legal and system development issues that the Agency-regulated institutions are addressing both through rulemaking and consultation with the CSBS and the SRR.

The Agency-regulated institutions will publicly announce the date on which the NMLSR will begin accepting federal registrations; that date will mark the beginning of the period during which employees of Agency-regulated institutions must complete the initial registration process. When fully operational, mortgage loan originators and their Agency-regulated institution employers are expected to have access to the NMLSR, 7 days a week, to establish and maintain their registrations.

⁹ In their final rule, the federal banking agencies and the FCA stated that "...some employees of Agency-regulated institutions also may be subject to the State licensing and registration regime. For example, employees who act as mortgage loan originators for a bank and a nondepository subsidiary of a bank holding company that is not a subsidiary of a depository institution would be subject to both the Federal and State regimes." See e.g., 75 FR at 44657 (col. 2, fn. 1).

Appendix A: HUD's Proposed Rule

Appendix B: 2009 SRR/NMLSR Report to Congress



Federal Register

**Tuesday,
December 15, 2009**

Part VI

**Department of
Housing and Urban
Development**

24 CFR Parts 30 and 3400

**SAFE Mortgage Licensing Act: HUD
Responsibilities Under the SAFE Act;
Proposed Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**
24 CFR Parts 30 and 3400
[Docket No. FR-5271-P-01]
RIN 2502-A170
**SAFE Mortgage Licensing Act: HUD
Responsibilities Under the SAFE Act**
AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act or Act) was enacted into law on July 30, 2008, as part of the Housing and Economic Recovery Act of 2008. This new law directs States to adopt licensing and registration requirements for loan originators that meet the minimum standards specified in the SAFE Act, in lieu of HUD establishing and maintaining a licensing system for loan originators. This new law also encourages the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish a nationwide mortgage licensing system and registry (NMLSR) for the residential mortgage industry for the purpose of providing: uniform State-licensing application and reporting requirements for residential mortgage loan originators, and a comprehensive database to find and track mortgage loan originators licensed by the States and mortgage loan originators that work for federally regulated banks. Loan originators who are employees of federally regulated depository institutions and their subsidiaries are required to register through the NMLSR, but are not subject to State licensing requirements.

If HUD determines that a State's mortgage loan origination licensing standards do not meet the minimum requirements of the statute, HUD is charged with establishing and implementing a system for mortgage loan originators in that State. Additionally, if at any time HUD determines that the NMLSR is failing to meet the SAFE Act's requirements, HUD is charged with establishing and maintaining a licensing and tracking system for mortgage loan originators.

This rule sets forth the minimum standards that the SAFE Act provides States to meet in licensing loan originators. Additionally, consistent with HUD's charge under the SAFE Act, this rule provides the following: the procedure that HUD will use to

determine whether a State's licensing and registration system is SAFE Act compliant; the actions that HUD will take if HUD determines that a State has not established a SAFE Act-compliant licensing and registration system or that the NMLSR established by CSBS and AARMR is not SAFE Act compliant; the minimum requirements for the administration of the NMLSR; and HUD's enforcement authority if it operates a State licensing system.

In addition to establishing HUD's responsibilities under the SAFE Act, through this rule, HUD proposes to clarify or interpret certain statutory provisions that pertain to the scope of the SAFE Act licensing requirements, and other requirements that pertain to the implementation, oversight, and enforcement responsibilities of the States. HUD solicits comment on the proposed clarifications and on the regulations proposed to be codified.

DATES: *Comment due date:* February 16, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified

above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9164, Washington DC 20410; telephone number 202-708-6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:
I. Background

The Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, approved July 30, 2008) (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 designed to improve accountability on the part of loan originators, combat fraud, and enhance consumer protections.

The SAFE Act encourages States to establish minimum standards for the licensing and registration of State-licensed mortgage loan originators and encourages the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain the NMLSR 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 mortgage market place and providing comprehensive training and examination requirements related to mortgage lending;

(10) Facilitating the collection and disbursement of consumer complaints on behalf of State mortgage regulators. CSBS and AARMR have established this registry, and it can be found at <http://www.Stateregulatoryregistry.org>.

The SAFE Act also 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 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. HUD may grant an extension of 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.

HUD is charged by the SAFE Act to establish and maintain a licensing and registration system for a State or territory that does not have in place a system for licensing 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 this section [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."

For any State for which HUD must establish such licensing and registration system, 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.

As noted earlier, the SAFE Act encourages CSBS and AARMR to establish and maintain the NMLSR, and these organizations have development of the NMLSR under way. In addition to developing the NMLSR, CSBS and AARMR developed model legislation to aid and facilitate States' compliance with the requirements of the SAFE Act. Because overall responsibility for interpretation, implementation, and compliance with the SAFE Act rests with HUD, CSBS and AARMR requested that HUD review the model legislation, and advise of its sufficiency in meeting applicable minimum requirements of the SAFE Act. HUD reviewed the model legislation and advised the public that the model legislation offers an approach that meets the minimum requirements of the SAFE Act. States that adopt and implement a State licensing system that follows the provisions of the model legislation, whether by statute or regulation, will be presumed to have met the applicable minimum requirements of the SAFE Act.

In advising the public of its assessment of the model legislation, HUD also presented its 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. These views and interpretations, referred to as HUD's Commentary (or Commentary) can be found at <http://www.hud.gov/offices/hsg/sfh/reguprog.cfm>. (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.) This rule proposes to incorporate the views and interpretations of the SAFE Act that HUD presented in its Commentary.

More recently, HUD posted on its Web site responses to frequently asked questions about the SAFE Act. One of the questions asked concerned the applicability of the definition of loan originator to individuals who modify existing residential mortgage loans. As HUD's response to this question reflects, given the extent to which today's loan modifications can be virtually indistinguishable from refinances, HUD sees the reasonableness of covering these individuals under the definition of loan originator and has advised that it is inclined to require the licensing of individuals who perform loan modifications for servicers. In its response to the question, HUD also highlighted several issues related to loan modifications. Given the continued poor State of the housing situation and the importance of promoting loan modifications as a means of avoiding foreclosure, HUD seeks comment on this issue, as discussed later in this preamble.

Related to HUD's rulemaking is regulatory action recently taken by the Office of the Comptroller of the Currency of the Department of the Treasury, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision of the Department of the Treasury, the Farm Credit Administration (FCA), and the National Credit Union Administration (collectively, the agencies). The SAFE Act requires these agencies, through the Federal Financial Institutions Examination Council (FFIEC) and the FCA, to develop and maintain a Federal registration system for employees of an institution regulated by one (or more) of the agencies, and to implement this system by July 29, 2009. The SAFE Act specifically prohibits an individual employed by an agency-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 agencies published their proposed rule to implement this registration system on June 9, 2009, at 74 FR 27386. The agencies' proposed rule also seeks comment on the issue of coverage of individuals who perform loan

modifications. (See 74 FR at 27391–27392.)

With respect to the agencies' responsibilities under the SAFE Act, and the responsibilities of HUD, it is important to note that HUD's regulations, when promulgated, do not apply to individuals who are employees of agency-regulated institutions and are, accordingly, subject to the regulations to be promulgated by the agencies. Additionally, any action taken by HUD based on a determination that the NMLSR does not meet the requirements of the SAFE Act with respect to individuals subject to the State licensing and registration requirements of the SAFE Act, would not apply to individuals subject to the agencies' SAFE Act regulations.

II. This Proposed Rule

This proposed rule addresses the criteria that HUD will use to determine whether a State has put in place a system for licensing and registering loan originators as required by the SAFE Act. The rule sets forth the statutorily imposed minimum requirements that a State would have to meet to be in compliance with the SAFE Act. Those minimum requirements are found in section 1505 of the SAFE Act, which governs State license and registration application and issuance, section 1506, which governs the standards for State license renewal, and section 1508(d), which governs other standards that a State's law and licensing system must meet. This rule also sets forth clarifications and interpretations of the SAFE Act that HUD previously provided to the public through its Commentary. Among the important clarifications that this rule proposes to make are definitions of what activities are included in "tak[ing] a residential mortgage loan application" and "offer[ing] or negotiate[ing] terms of a residential mortgage loan," and what it means to do so "for compensation or gain." The meanings of these terms largely determine whether or not a particular individual is subject to licensing requirements. HUD is aware of the great variety of business models that are utilized in the housing finance industry and proposes to provide definitions based on functions, rather than on job titles or labels, to further clarify whether an individual is subject to licensing requirements. HUD specifically seeks comment on whether the proposed definitions, which are further discussed below, are adequate and appropriate.

This proposed rule would provide that the requirements that HUD would put in place if HUD must establish a

licensing and registration system for a State are the same as the minimum requirements that States must implement, in accordance with section 1508 of the SAFE Act. This proposed rule would also provide the criteria that HUD will use to determine, in accordance with section 1509 of the SAFE Act, whether the NMLSR meets the requirements of the SAFE Act.

This rule incorporates the provisions of section 1512 of the SAFE Act, pertaining to confidentiality of information, and of section 1513, pertaining to protection from liability for HUD or the administrator of the NMLSR by reason of good-faith action or omission of any officer or employee of HUD or the administrator while acting within the scope of office or employment, relating to the collection, furnishing or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

This rule also addresses the enforcement authority provided to HUD in section 1514 of the SAFE Act. Section 1514 of the SAFE Act provides HUD with: (1) Summons authority for information on any loan originator operating in any State that is subject to a licensing system established by HUD; (2) the authority to appoint examiners to assist HUD in its responsibilities in a State in which HUD established a licensing system; and (3) the authority to conduct cease-and-desist proceedings with respect to any person who is violating, has violated, or is about to violate any provision of the SAFE Act under a licensing system established by HUD, including the authority to issue temporary orders.

Consistent with HUD's responsibility to oversee implementation and compliance with the SAFE Act, HUD would like to highlight for the public's attention, the following determinations that HUD has made and for which HUD specifically welcomes comment. Several of the determinations were presented in the Commentary which HUD issued in connection with its review of the CSBS/AARMR model legislation and are repeated here. To the extent that this rule would clarify and interpret minimum requirements that are ambiguous or undefined in the SAFE Act, HUD anticipates that States that have already enacted otherwise compliant systems will be able to comply with the clarified requirements through issuance of regulations or otherwise, rather than through legislative amendments.

A. Engaging in the Business of a Loan Originator and State of Licensure

Section 1504(a) of the SAFE Act provides that, upon the establishment of a licensing or registry system, as applicable, in accordance with the SAFE Act, an individual "may not engage in the business of a loan originator" without first obtaining a registration or State license. Consistent with this statutory provision, this proposed rule would provide in § 3400.103 that an individual must comply with a State's licensing and registry requirements in order to engage in the business of a loan originator with respect to any residential property in that State. Section 3400.103 of the rule would clarify that the individual must comply with a State's licensing and registry requirements regardless of whether the individual or the prospective borrower is located in the State. This clarification would ensure that each State is able to establish and enforce the provisions of its SAFE Act licensing system and would prevent an individual from circumventing a State's requirements simply by physically locating outside of the State and conducting business in that State by telephone or other means. The same regulatory section clarifies, consistent with section 1503(3)(A)(ii) of the SAFE Act, that a person who performs only "administrative and clerical tasks" does not "engage in the business of a loan originator."

B. Taking an Application

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." This proposed rule would incorporate in § 3400.23 the interpretation of "application" provided in HUD's Commentary. The Commentary stated that "application" includes 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.

The Commentary also provided that HUD views the phrase "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. Section 3400.103(c)(1) of the proposed rule would incorporate the language of the

Commentary on “taking an application”. The Commentary also provided that HUD interprets the term “takes a residential mortgage loan application” to exclude an individual whose only role with respect to the application is 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 definition of “loan originator” in section 1503(3)(A)(ii) of the SAFE Act.

The Commentary also addressed the meaning of the term “loan originator.” The Commentary States that 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. This proposed rule would therefore provide in section 3400.103(c)(1) that 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.

C. Offering or Negotiating

Similar to HUD’s views on “loan originator”, HUD views the terms “offers or negotiates” broadly. HUD views these terms as encompassing interactions between an individual and a borrower where the individual is likely to seek to further his or her own interests or those of a third party. Accordingly, this rule would clarify in § 3400.103(c)(2) that the terms include interactions that are typical between two parties in an arm’s length relationship prior to entering into a contract, such as presenting loan terms for acceptance by a prospective borrower and communicating with the borrower for the purpose of reaching an understanding about prospective loan terms.

In addition, this proposed rule proposes to clarify that “offers or negotiates” includes actions by an individual that make a prospective borrower more likely to accept a particular set of loan terms or an offer from a particular lender, where the

individual may be influenced by a duty to or incentive from any party other than the borrower. Such actions may have the same effect on the borrower’s decision as overt negotiations, but without the borrower’s knowledge or understanding that other options may be available. Examples include a contingent payment, a contractual duty to recommend one lender or product, or a pattern of steering to a lender that provides grant funding to the steering housing counselor. HUD specifically welcomes comment on the clarification that HUD offers through this rule.

D. For Compensation or Gain

The terms “for compensation or gain” are proposed to be broadly defined in § 3400.103(c)(2) and would include any circumstances in which an individual receives or expects to receive anything of value in connection with offering or negotiating terms of a residential mortgage loan. These terms would not be limited to payments that are contingent upon closing of a loan.

E. Independent Contractor Loan Processors or Underwriters

Sections 1503(4) and 1504(b) of the SAFE Act provide that certain individuals who “engage in residential mortgage loan origination activities as a loan processor or underwriter” must have a loan originator license, even if their activities do not amount to “engag[ing] in the business of a loan originator” under § 1504(a). The SAFE Act defines “loan processor or underwriter” as an individual who performs “clerical or support duties” at the direction of and subject to the supervision and instruction of a State-licensed loan originator or registered loan originator. “Clerical or support duties” are defined to include communicating with a consumer and third parties to collect and analyze information that is necessary to process an application or to underwrite the loan.

Sections 1503(4) and 1504(b) provide that this licensing requirement does not apply to an individual who fully meets the definition of a loan processor or underwriter, in that he or she performs these clerical or support duties at the direction of and subject to the supervision and instruction of a State-licensed loan originator or registered loan originator. Sections 1503(4) and 1504(b) provide that this licensing requirement does apply to individuals who are “independent contractors” who perform these clerical or support duties, because, by definition, they do not perform their duties at the direction of and subject to the supervision and instruction of a State licensed loan

originator or a registered loan originator. It is the lack of such supervision by individuals already licensed or registered as loan originators that subjects loan processors or underwriters to the SAFE Act licensing and registry requirements.

This proposed rule would clarify in § 3400.23 that an “independent contractor,” for purposes of this provision, is an individual who performs these duties other than at the direction of and subject to the supervision of a State licensed loan originator or a registered loan originator. Accordingly, an individual who is an employee of some person or entity (i.e., the individual is not an independent contractor), but who is not subject to the direction, supervision, and instruction of a licensed or registered loan originator, would have to obtain a loan originator license. Such a person or entity could prevent its employees from having to obtain a State loan originator license simply by ensuring that they perform any “clerical or support duties” at the direction of and subject to the supervision and instruction of a State-licensed loan originator or registered loan originator.

F. Individuals Not Subject to Licensing Requirements

Notwithstanding the broad definition of “loan originator” in the SAFE Act, as noted in HUD’s Commentary, 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. Accordingly, this proposed rule would provide in § 3400.103(e)(4) that such individuals are not subject to State licensing requirements.

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, this rule would provide in § 3400.103(e)(5) that such individuals are not subject to State licensing requirements.

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 attorney's duties of loyalty to the client require the attorney to seek to further only the client's interests, and the attorney does not negotiate *with* or make offers of loan terms *to* the client. Accordingly, such activities would not fall within the definition of "offers or negotiates" as proposed to be defined in § 3400.103(c)(2) and discussed above, and would therefore not be engaging in the business of a loan originator. This rule would provide in § 3400.103(e)(5) that such individuals are not subject to State licensing requirements.

Finally, section 1503(7)(A) of the SAFE Act provides that employees of: (i) A depository institution, (ii) a subsidiary that is owned and controlled by a depository institution and that is regulated by a Federal banking agency, or (iii) an institution regulated by the Farm Credit Administration are not subject to State licensing requirements. The SAFE Act does not define the term "employee" and, in consultation with staff of the Federal banking agencies and the Farm Credit Administration, HUD was apprised that there is no general definition of "employee" used by these Federal agencies. Accordingly, this proposed rule would clarify in § 3400.23 that HUD interprets "employee" to mean only an individual who meets a common law definition of employee and whose income is required to be reported on a W-2 form, unless the Federal banking agencies provide another binding definition. (See Restatement (Third) of Agency § 7.07(3) and comment f.)

G. Minimum Requirements for Licensing

Section 1505 sets forth the minimum licensing requirements. Section 1505(a) requires a background check on the applicant, which includes the submission of fingerprints, personal history and experience, an independent credit report, and information relating to any administrative, civil, or criminal findings by any governmental institution.

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 7 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, this proposed rule would clarify in § 3400.105(b)(2) that an individual is 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 § 3400.105(b)(2) would provide that a pardoned conviction would not render an individual ineligible. Section 3400.105(b)(2) would also clarify that 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.

Section 1505(c) establishes pre-licensing education for loan originators. In order to meet the pre-licensing education requirement, the applicant must complete at least 20 hours of approved education, which shall include: (1) At least 3 hours of Federal law and regulation; (2) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and (3) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

Section 1505(d) requires the applicant to meet a written test, developed by the NMLS, and administered by an approved test provider.

Section 1505(e) requires each mortgage licensee to submit to the NMLS reports of condition (or mortgage call reports). This requirement is further addressed in section I of this preamble and § 3400.111(f) of the proposed regulation.

H. 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. HUD's position is that Congress did not intend for States to require all mortgage loan originators to meet the educational, testing, and background check requirements and to be licensed immediately upon enactment of the State's legislation or issuance of regulations. 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.

Considering the education, testing, and background check standards that license applicants must meet, this proposed rule would provide in § 3400.109(a) that an acceptable 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. Section 3400.109(b) would provide that for individuals who possess licenses granted under a system that was enacted prior to the SAFE Act-compliant system, a reasonable delay is one that does not extend past December 31, 2010. This effective date would accommodate individuals with 2-year licenses that were granted or renewed as late as December 2008, and would also synchronize with the NMLSR's uniform annual license expiration date of December 31. Section 3400.109(c) would provide for the possibility of further extensions in the case of unusual hardship faced by loan originators in a State. Finally, § 3400.109(d) would permit States to extend the deadline for individuals who perform or facilitate only modifications or refinancing under the Federal government's Making Home Affordable program. HUD does not believe that SAFE Act licensing requirements should limit borrowers' access to the benefits and protections of the Making Home Affordable program.

I. Other Requirements

Section 1508(d) of the SAFE Act provides additional requirements that a State's loan originator licensing law and system must meet, including the requirement that the State's loan originator supervisory authority be maintained "to provide effective supervision and enforcement" of the law. This proposed rule would provide in §§ 3400.111 and 3400.113 a non-exhaustive list of minimum standards that a State supervisory authority must meet in order to provide effective supervision and enforcement, including enforcement authorities that approximate those that HUD would have in a State where it establishes a licensing system, in accordance with section 1514 of the SAFE Act. HUD specifically invites comment on whether its proposed enforcement authorities reflect effective supervision and enforcement of the Safe Act requirements.

Section 3400.111(f) also incorporates the statutorily required submission of reports of condition (or mortgage call reports), and would clarify that it is the responsibility of the loan originator to ensure that all residential mortgage loans that close as a result of the loan originator's activities are included in such reports. This clarification would not prevent such reports from being submitted at an institutional level, but the responsibility for ensuring submission would remain that of the individual loan originator.

This proposed rule would also provide that accreditation under CSBS's Mortgage Accreditation Program provides a supervisory authority a safe harbor, under which HUD will presume that the supervisory authority is providing "effective supervision and enforcement."

J. Determinations of Noncompliance by HUD

This proposed rule would specify in § 3400.115 the method HUD will use in making a final determination that a State is not in compliance with the SAFE Act's requirements. Section 3400.115 would provide that a State must provide evidence of its compliance upon request from HUD, and would provide that HUD will provide notice and the opportunity for comment of its initial determination of a State's noncompliance with the SAFE Act, and that HUD's final determination will be published in the **Federal Register**. This regulatory section would also provide that HUD may grant a good-faith extension of up to 24 months from the date of HUD's determination of noncompliance. Finally, § 3400.115 would provide the time frame for when HUD's implementation of a licensing system in a State becomes effective.

K. NMLSR Requirements.

This rule provides in subpart D the requirements that apply to the NMLSR. Section 3400.303 proposes to provide financial reporting requirements that are necessary to determine whether fees charged by the NMLSR are reasonable and not excessive, in accordance with section 1510 of the SAFE Act. This rule would also provide in § 3400.305 requirements that apply to the NMLSR's data security and integrity, which are necessary to achieve the confidentiality required under section 1512 of the SAFE Act and for HUD to determine that NMLSR is meeting the SAFE Act's requirements and purposes. HUD specifically invites comments on whether these provisions are adequate and appropriate.

L. Loan Modifications

As noted earlier in this preamble, HUD continues to seek comment on HUD's inclination to require licensing, as loan originators under the SAFE Act, of individuals who perform loan modifications that involve offering or negotiating of loan terms that are materially different from the original loan. HUD first addressed this issue in a frequently asked questions section on its Web site, concerning the SAFE Act. For the convenience of the reader, and to highlight the questions for which

HUD specifically seeks comment, HUD reviews its consideration of this issue as set forth in the frequently asked questions section.

HUD's consideration of this issue is based on HUD's recognition that servicers are increasingly taking applications for and negotiating the terms of loan modifications that materially 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 co-signer. 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 material alteration to the terms of a residential loan that are occurring through today's modifications, HUD is inclined to include in its definition of a loan originator, which is being developed through this rulemaking, 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. 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 understands the uncertainty within the residential mortgage industry about whether loan servicers are covered by the SAFE Act. The uncertainty stems from the fact that traditional loan servicer activities (*e.g.*, sending monthly payment statements, collecting monthly payments, maintaining records of payments and balances, collecting and paying taxes and insurance, remitting funds to the note holder, and following up on

delinquencies) do not constitute loan origination activities. However, given the housing crisis and as noted earlier, loan servicers today are engaged in modification activities that go beyond those that they traditionally performed and that constitute "engag[ing] in the business of a loan originator," within the meaning of the SAFE Act. Furthermore, when a borrower seeks a loan modification from his or her loan servicer, the borrower may face the same risks that Congress sought to control through loan originator licensing. As a result, borrowers may be well served if individuals who negotiate the terms of loan modifications are required to have the same level of competency, integrity, and accountability that the SAFE Act requires of those originating new loans, including the refinancing of an existing mortgage.

To assist with HUD's consideration and resolution of this issue, HUD specifically invites submission of views on any mandatory licensing provisions, quality controls, and training requirements that are already applicable to servicers, and on whether such measures provide protections for consumers that are equivalent to those under the SAFE Act. HUD also requests 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 requests views on whether, if SAFE Act licensing of loan servicers is required at HUD's final rule stage, the rule 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 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 has determined that the model State law developed by CSBS and 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 of 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.

M. Third-Party Loan Modification Specialists

HUD has seen a substantial increase in the number of third-party actors (*i.e.*, individuals other than lenders and loan servicers) offering their services as intermediaries to work putatively on behalf of borrowers to negotiate modifications of existing loan terms. In many cases the activities of these third-party actors closely resemble those of mortgage brokers, who act as intermediaries between lenders and borrowers to facilitate the origination of new residential mortgage loans and refinancing of existing mortgages. These third-party actors may advertise their services on television or through telemarketing, targeting homeowners who are having difficulty making their current mortgage payments. In other cases, third parties work with borrowers directly, under programs sponsored by governmental or nonprofit agencies, to advise or assist borrowers in obtaining loan modifications. It is HUD's view that third-party loan modification specialists should be covered by the licensing requirements of the SAFE Act.

HUD specifically requests comment on whether third-party loan modification specialists should be covered by the definition of loan originator and, consequently, be subject to the licensing and registration requirements of the SAFE Act. HUD also requests comments on what specific functions performed by third-party loan modification specialists should be characterized as equivalent to the functions of a loan originator that are covered by the SAFE Act.

N. Grandfathering

One issue that has arisen that HUD did not address in its Commentary on the model State law is that of grandfathering. Specifically, HUD has been asked whether a State may permanently waive certain SAFE Act requirements for individuals who have a certain amount of experience as loan originators. The SAFE Act is clear that to engage in the business of a loan originator, an individual must meet all of the licensing requirements. The SAFE Act makes no provision for waiver of these requirements by States. Accordingly, grandfathering is not authorized under the SAFE Act, and this proposed rule would not provide for grandfathering. However, individuals who were licensed under a previous licensing system may be afforded an extended period of time to comply with requirements, as discussed in part H of this preamble.

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, "Regulatory Planning and Review"). This rule was determined to be a "significant regulatory action" as defined in section 3(f) of the Order, although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order.

HUD's determination that this rule is not an economically significant regulatory action is supported by the fact that the SAFE Act establishes the minimum licensing standards for loan originators, not HUD. While HUD has interpretive, oversight, and enforcement authority under the SAFE Act, HUD is not authorized to make only certain licensing standards applicable to loan originators, and not others. Accordingly, HUD is not able to alter costs that result from compliance with these statutorily imposed requirements either by States or individuals.

This proposed rule is primarily directed to addressing HUD's oversight and enforcement responsibilities. The costs that result from these activities are therefore costs that will be borne by HUD in carrying out its oversight and enforcement responsibilities. While HUD recognizes that there are costs that will be incurred by States and individuals in complying with the SAFE Act requirements, the SAFE Act contemplates that balanced against these costs will be the benefits to which the SAFE Act strives to achieve, which

include: uniform license applications and reporting requirements; increased accountability of loan originators; enhanced consumer protections; a streamlined licensing process; and reduced administrative burden through the uniformity provided by the nationwide standards, especially for those that originate loans in more than one State.

The docket file for this rule is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th Street, SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SAFE Act, which establishes minimum licensing requirements for loan originators, is largely directed to individuals who are loan originators as defined by the SAFE Act. The SAFE Act requires each individual to be licensed and registered under the requirements of the SAFE Act. With respect to the SAFE Act licensing standards, HUD is not, through this rule, establishing or implementing these licensing requirements, because the SAFE Act made these requirements self-implementing. Rather, through this rule, HUD proposes to codify, in regulation, the SAFE Act minimum licensing standards, and to codify those clarifications and interpretations that HUD already has issued through Web site postings. HUD is proposing, however, to establish regulations reflecting its oversight responsibilities under the SAFE Act. The codification of the licensing standards, together with HUD's oversight regulations, will provide a convenient location for regulated parties and interested individuals to reference SAFE Act requirements. Because the SAFE Act is not directed to entities, large or small,

but individuals, and because this rule is directed to HUD's oversight responsibilities, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of Section 6 of the Executive Order are met. This rule merely implements the statutory requirements of the SAFE Act and does not have federalism implications beyond those in the Act. This rule does not itself impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandate on any State, local, or tribal government or the private sector within the meaning of UMRA.

List of Subjects

24 CFR Part 30

Administrative practice and procedure, Grant programs-housing and

community development, Loan programs-housing and community development, Mortgages, and Penalties.

24 CFR Part 3400

Licensing, Mortgages, Registration, Reporting and recordkeeping requirements.

For the reasons Stated in the preamble, HUD proposes to amend 24 CFR part 30 and add a new 24 CFR part 3400, as follows:

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

1. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, and 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

2. Add § 30.69 to subpart B to read as follows:

§ 30.69 SAFE Mortgage Licensing violations.

(a) *General.* HUD may impose a civil penalty on a loan originator operating in any State which is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of 24 CFR part 3400, if HUD finds that such loan originator has violated or failed to comply with any requirement of the SAFE Act, the provisions of 24 CFR part 3400, or a provision of State law enacted or promulgated under the SAFE Act to which the person is subject and with respect to a State that is subject to a licensing system established by HUD under section 12 U.S.C. 5107 and in accordance with subpart C of 24 CFR part 3400.

(b) *Maximum amount of penalty.* The maximum amount of penalty for each act or omission described in paragraph (a) of this section shall be \$25,000.

3. Add part 3400, to read as follows:

PART 3400—SAFE MORTGAGE LICENSING ACT

Sec.

3400.1 Purpose.

3400.3 Confidentiality of information.

Subpart A—General

3400.20 Scope of this subpart.

3400.23 Definitions.

Subpart B—Determination of State Compliance with the SAFE Act

3400.101 Scope of this subpart.

3400.103 Individuals required to be licensed by States.

3400.105 Minimum loan originator license requirements.

3400.107 Minimum annual license renewal requirements.

3400.109 Effective date of State

requirements imposed on individuals.

3400.111 Other minimum requirements for State licensing systems.

3400.113 Performance standards.

3400.115 Determination of noncompliance.

Subpart C—HUD's Loan Originator Licensing System and HUD's Nationwide Mortgage Licensing and Registry System

3400.201 Scope of this subpart.

3400.203 HUD's establishment of loan originator licensing system.

3400.205 HUD's establishment of nationwide mortgage licensing system and registry.

Subpart D—Minimum Requirements for Administration of the NMLSR

3400.301 Scope of this subpart.

3400.303 Financial reporting.

3400.305 Data security.

3400.307 Fees.

3400.309 Absence of liability for good-faith administration.

Subpart E—Enforcement of HUD Licensing System

3400.401 HUD's authority to examine loan originator records.

3400.403 Enforcement proceedings.

3400.405 Civil money penalties.

Authority: 12 U.S.C. 5101–5113; 42 U.S.C. 3535(d).

§ 3400.1 Purpose.

(a) This part implements HUD's responsibilities under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) (12 U.S.C. 5101–5113). The SAFE Act strives to enhance consumer protection and reduce fraud by directing States to adopt minimum uniform standards for the licensing and registration of residential mortgage loan originators and to participate in a nationwide mortgage licensing system and registry database of residential mortgage loan originators. Under the SAFE Act, if HUD determines that a State's loan origination licensing system does not meet the minimum requirements of the SAFE Act, HUD is charged with establishing and implementing a system for all loan originators in that State. Additionally, if at any time HUD determines that the nationwide mortgage licensing system and registry is failing to meet the SAFE Act's requirements, HUD is charged with establishing and maintaining a licensing and registry database for loan originators.

(b) Subpart A establishes the definitions applicable to this part. Subpart B provides the minimum standards that a State must meet in licensing loan originators, including standards for whom a State must require to be licensed, and sets forth HUD's procedure for determining a State's

compliance with the minimum standards. Subpart C provides the requirements that HUD will apply in any State that HUD determines has not established a licensing and registration system in compliance with the minimum standards of the SAFE Act. Subpart D provides minimum requirements for the administration of the Nationwide Mortgage Licensing System and Registry. Subpart E clarifies HUD's enforcement authority in States in which it operates a State licensing system.

§ 3400.3 Confidentiality of information.

(a) Except as otherwise provided in this part, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under this part, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) Information or material that is subject to a privilege or confidentiality under paragraph (a) of this section shall not be subject to:

(1) Disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or by the Secretary with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(c) Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material described in paragraph (a) of this section that is inconsistent with paragraph (a), shall be superseded by the requirements of such provision to the extent that State law provides less confidentiality or a weaker privilege.

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Subpart A—General

§ 3400.20 Scope of this subpart.

This subpart provides the definitions applicable to this part, and other general requirements applicable to this part.

§ 3400.23 Definitions.

Terms that are defined in the SAFE Act and used in this part have the same meaning as in the SAFE Act, unless otherwise provided in this section.

Administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

American Association of Residential Mortgage Regulators is the national association of executives and employees of the various States who are charged with the responsibility for administration and regulation of residential mortgage lending, servicing and brokering, and dedicated to the goals described at <http://www.aarmr.org>.

Application means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms and the information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer.

Clerical or support duties:

(1) Include:

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; and

(2) Does not include:

(i) Taking a residential mortgage loan application; or

(ii) Offering or negotiating terms of a residential mortgage loan.

Conference of State Bank Supervisors (CSBS) is the national organization

composed of State bank supervisors dedicated to maintaining the State banking system and State regulation of financial services in accordance with the CSBS statement of principles described at <http://www.csbs.org>.

Employee:

(1) Subject to paragraph (2) of this definition, means:

(i) An individual:

(A) Whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and

(B) Whose compensation for Federal income tax purposes is reported, or required to be reported, on a W-2 form.

(2) Has such binding definition as may be issued by the Federal banking agencies in connection with their implementation of their responsibilities under the SAFE Act.

Farm Credit Administration means the independent Federal agency, authorized by the Farm Credit Act of 1971, to examine and regulate the Farm Credit System.

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.

Independent contractor means an individual who performs his or her duties other than at the direction of and subject to the supervision and instruction of an individual who is licensed and registered in accordance with § 3400.103(a), or is exempt under § 3400.103(e)(7).

Loan originator. See § 3400.103.

Loan processor or underwriter, for purposes of this part, means an individual who, with respect to the origination of a residential mortgage loan, performs clerical or support duties at the direction of and subject to the supervision and instruction of:

(1) A State-licensed loan originator, or

(2) A registered loan originator.

Nationwide Mortgage Licensing System and Registry or NMLSR means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for licensing and registration of loan originators and the registration of registered loan originators or any system established by the Secretary of HUD, as provided in subpart D of this part.

Nontraditional mortgage product means any mortgage product other than a 30-year fixed-rate mortgage.

Real estate brokerage activities mean any activity that involves offering or

providing real estate brokerage services to the public including—

(1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(4) Engaging in any activity for which a person engaged in the activity is required to be registered as a real estate agent or real estate broker under any applicable law; and

(5) Offering to engage in any activity, or act in any capacity, described in paragraphs (1), (2), (3), or (4) of this definition.

Residential mortgage loan means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

Secretary means the Secretary of Housing and Urban Development.

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.

Unique identifier means a number or other identifier that:

(1) Permanently identifies a loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and

(3) Shall not be used for purposes other than those set forth under the SAFE Act.

Subpart B—Determination of State Compliance With the SAFE Act

§ 3400.101 Scope of this subpart.

This subpart describes the minimum standards of the SAFE Act that apply to a State's licensing and registering of loan originators. This subpart also provides the procedures that HUD

follows to determine that a State does not have in place a system for licensing and registering mortgage loan originators that complies with the minimum standards. Upon making such a determination, HUD will impose the requirements and exercise the enforcement authorities described in subparts C and E of this part.

§ 3400.103 Individuals required to be licensed by States.

(a) Except as provided in paragraph (e) of this section, in order to operate a SAFE-compliant program, a State must prohibit an individual from engaging in the business of a loan originator with respect to any dwelling or residential real estate in the State, unless the individual first:

(1) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and

(2) Obtains and maintains a valid loan originator license from the State.

(b)(1) An individual engages in the business of a loan originator if the individual:

(i)(A) Takes a residential mortgage loan application; and

(B) Offers or negotiates terms of a residential mortgage loan for compensation or gain; or

(ii) Represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationary, brochures, signs, rate lists, or other promotional items), that such individual can or will provide any of the services or perform any of the activities described in paragraph (b)(1)(i) of this section.

(2) An individual does not engage in the business of a loan originator merely by performing administrative or clerical tasks.

(c)(1) An individual "takes a residential mortgage loan application" if the individual receives a residential mortgage loan application for the purpose of deciding (or influencing or soliciting the decision of another) whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower (or to accept the terms offered by a borrower or prospective borrower in response to a solicitation), whether the application is received directly or indirectly from the borrower or prospective borrower.

(2) An individual "offers or negotiates terms of a residential mortgage loan for compensation or gain" if the individual:

(i)(A) Presents for acceptance by a borrower or prospective borrower residential mortgage loan terms;

(B) Communicates directly or indirectly with a borrower or

prospective borrower for the purpose of reaching an understanding about prospective residential mortgage loan terms; or

(C) Recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower; and

(ii) Receives or expects to receive payment of money or anything of value in connection with the activities described in paragraph (c)(2)(i) of this section or as a result of any residential mortgage loan terms entered into as a result of such activities.

(d)(1) Except as provided in paragraph (e) of this section, a State must prohibit an individual who is an independent contractor from engaging in residential mortgage loan origination activities as a loan processor or underwriter with respect to any dwelling or residential real estate in the State, unless the individual first:

(i) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and

(ii) Obtains and maintains a valid loan originator license from the State.

(2) An individual engages in residential mortgage loan origination activities as a loan processor or underwriter if, with respect to a residential mortgage loan application, the individual performs clerical or support duties.

(e) A State is not required to impose the prohibitions required under paragraphs (a) and (d) of this section on the following individuals:

(1) An individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the individual is compensated directly or indirectly by a lender, mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator;

(2) An individual who is involved only in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D);

(3) A loan processor or underwriter who performs only clerical or support duties and does so at the direction of and subject to the supervision and instruction of an individual who is licensed and registered in accordance with paragraph (a) of this section or who is exempt under paragraph (e)(7) of this section;

(4) An individual who only offers or negotiates terms of a residential mortgage loan with or on behalf of an

immediate family member of the individual;

(5) Any individual who only offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(6) A licensed attorney who only negotiates the terms of a residential mortgage loan 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, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; or

(7) An individual who is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry, and who is an employee of—

(i) A depository institution;

(ii) A subsidiary that is:

(A) Owned and controlled by a

depository institution; and

(B) Regulated by a Federal banking agency; or

(iii) An institution regulated by the Farm Credit Administration.

(f) A State must require an individual licensed in accordance with paragraphs (a) or (d) of this section to renew the loan originator license no less often than annually.

§ 3400.105 Minimum loan originator license requirements.

For an individual to be eligible for a loan originator license required under § 3400.103(a) and (d), a State must require and find, at a minimum, that an individual:

(a) Has never had a loan originator license revoked in any governmental jurisdiction, except that a formally vacated revocation shall not be deemed a revocation;

(b)(1) Has never been convicted of, or pled guilty or *nolo contendere* to, a felony in a domestic, foreign, or military court:

(i) During the 7-year period preceding the date of the application for licensing; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

(2) For purposes of this paragraph (b):

(i) Expungement of a conviction described in paragraph (b)(1) of this section does not affect the ineligibility of the convicted individual;

(ii) Pardoned convictions do not render an individual ineligible; and

(iii) Whether a particular crime is classified as a felony is determined by the law of the State in which an individual is convicted.

(c) Has demonstrated financial responsibility, character, and general fitness, such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently, under reasonable standards established by the individual State.

(d) Completed at least 20 hours of pre-licensing education that has been reviewed and approved by the Nationwide Licensing System and Registry. The pre-licensing education completed by the individual must include at least:

(1) 3 hours of Federal law and regulations;

(2) 3 hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and

(3) 2 hours of training on lending standards for nontraditional mortgage product marketplace.

(e)(1) Achieved a test score of not less than 75 percent correct answers on a written test developed by the NMLSR in accordance with 12 U.S.C. 5105(d).

(2) To satisfy the requirement under paragraph (a)(5)(i) of this section, an individual may take a test three consecutive times, with each retest occurring at least 30 days after the preceding test. If an individual fails three consecutive tests, the individual must wait at least 6 months before taking the test again.

(3) If a State licensed loan originator fails to maintain a valid license for 5 years or longer, the individual must retake the test and achieve a test score of not less than 75 percent correct answers.

(f) Be covered by either a net worth or surety bond requirement, or pays into a State fund, as required by the State loan originator supervisory authority.

(g) Has submitted to the NMLSR fingerprints for submission to the Federal Bureau of Investigation and to any government agency for a State and national criminal history background check; and

(h) Has submitted to the NMLSR personal history and experience, which must include:

(1) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction; and

(2) An independent credit report.

§ 3400.107 Minimum annual license renewal requirements.

For an individual to be eligible to renew a loan originator license as required under § 3400.105(f), a State must require the individual:

(a) To continue to meet the minimum standards for license issuance provided in § 3400.105; and

(2) To satisfy annual continuing education requirements, which must include at least 8 hours of education approved by the NMLSR. The 8 hours of annual continuing education must include at least:

(i) 3 hours of Federal law and regulations;

(ii) 2 hours of ethics (including instruction on fraud, consumer protection, and fair lending issues); and

(iii) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) A State must provide that credit for a continuing education course is valid only for the year in which the course is taken and that an individual may not meet the annual requirements for continuing education by taking an approved course more than one time in the same year or in successive years.

(c) An individual who is an instructor of an approved continuing education course may receive credit for the individual's own annual continuing education requirement at the rate of 2 hours credit for every one hour taught.

§ 3400.109 Effective date of State requirements imposed on individuals.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a State must provide that the effective date for requirements it imposes in accordance with §§ 3400.103, 3400.105, and 3400.107 is no later than July 31, 2010.

(b) For an individual who was permitted to perform residential mortgage loan originations under State legislation or regulations enacted or promulgated prior to the State's enactment or promulgation of a licensing system that complies with this subpart, a State may delay the effective date for requirements it imposes in accordance with §§ 3400.103, 3400.105, and 3400.107 to no later than December 31, 2010. For purposes of this paragraph (b), an individual was permitted to perform residential mortgage loan originations only if prior State law required the individual to be licensed, authorized, registered, or otherwise granted a form of affirmative and revocable government permission for individuals as a condition of performing residential mortgage loan originations.

(c) HUD may approve a later effective 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.

(d) For an individual who engages in the business of a loan originator solely by providing or facilitating residential mortgage loan modifications and refinancing under the Department of the Treasury's Making Home Affordable program, a State may delay the effective date for requirements it imposes in accordance with §§ 3400.103, 3400.105, and 3400.107 until the date such program is terminated.

§ 3400.111 Other minimum requirements for State licensing systems.

(a) *General.* A State must maintain a loan originator licensing, supervisory, and oversight authority (supervisory authority) that provides effective supervision and enforcement, in accordance with the minimum standards provided in this section and in § 3400.113.

(b) *Authorities.* A supervisory authority must have the legal authority and mechanisms:

(1) To examine any books, papers, records, or other data of any loan originator operating in the State;

(2) To summon any loan originator operating in the State, or any person having possession, custody, or care of the reports and records relating to such a loan originator, to appear before the supervisory authority at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of the SAFE Act;

(3) To administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator;

(4) To enter an order requiring any individual or person that is, was, or would be a cause of a violation of the SAFE Act as implemented by the State, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same requirement;

(5) To suspend, terminate, and refuse renewal of a loan originator license for violation of State or Federal law; and

(6) To impose civil money penalties for individuals acting as loan originators, or representing themselves to the public as loan originators, in the State without a valid license or registration.

(c) A supervisory authority must have established processes in place to verify that individuals subject to the requirement described in § 3400.103(a)(1) and (d)(1) are registered with the NMLSR.

(d) The supervisory authority must be required under State law to regularly report violations of such law, as well as enforcement actions and other relevant information, to the NMLSR.

(e) The supervisory authority must have a process in place for challenging information contained in the NMLSR.

(f) The supervisory authority must require a loan originator to ensure that all residential mortgage loans that close as a result of the loan originator engaging in activities described in § 3400.103(b)(1) are included in reports of condition submitted to the NMLSR. Such reports of condition shall be in such form, shall contain such information, and shall be submitted with such frequency and by such dates as the NMLSR may reasonably require.

§ 3400.113 Performance standards.

(a) For HUD to determine that a State is providing effective supervision and enforcement, a supervisory authority must meet the following performance standards:

(1) The supervisory authority must participate in the NMLSR;

(2) The supervisory authority must approve or deny loan originator license applications and must renew or refuse to renew existing loan originator licenses for violations of State or Federal law;

(3) The supervisory authority must discipline loan originator licensees with appropriate enforcement actions, such as license suspensions or revocations, cease-and-desist orders, civil money penalties, and consumer refunds for violations of State or Federal law;

(4) The supervisory authority must examine or investigate loan originator licensees in a systematic manner based on identified risk factors or on a periodic schedule.

(b) A supervisory authority that is accredited under the Conference of State Bank Supervisors Mortgage Accreditation Program will be presumed by HUD to be compliant with the requirements of this section.

§ 3400.115 Determination of noncompliance.

(a) *Evidence of compliance.* Any time a State enacts legislation that affects its compliance with the SAFE Act, it must notify HUD. Upon request from HUD, a State must provide evidence that it is in compliance with the requirements of the SAFE Act and this part, including

citations to applicable State law, and regulations, descriptions of processes followed by the State's supervisory authority, and data concerning examination, investigation, and enforcement actions.

(b) *Initial determination of noncompliance.* If HUD makes an initial determination that a State is not in compliance with the SAFE Act, HUD will notify the State and also publish, in the **Federal Register**, HUD's initial finding and presenting the opportunity for public comment for a period of no less than 30 days. This public comment period will allow the residents of the State and other interested members of the public to comment on HUD's initial determination.

(c) *Final determination of noncompliance.* In making a final determination of noncompliance, HUD will review additional information that may be offered by a State and the comments submitted during the public comment period described in paragraph (b) of this section. If HUD makes a final determination that a State does not have in place by law or regulation a system that complies with the minimum requirements of the SAFE Act, as described in this part, HUD will publish that final determination in the **Federal Register**.

(d) *Good-faith effort to meet compliance.* If HUD makes the final determination described in paragraph (c) of this section, but HUD finds that the State is making a good-faith effort to meet the requirements of 12 U.S.C. 5104, 5105, 5107(d), and this subpart, HUD may grant the State a period of not more than 24 months to comply with these requirements.

(e) *Effective date of subparts C and E.* The provisions of subparts C and E of this part will become effective with respect to a State upon the latter of:

(1) The effective date of HUD's final determination with respect to the State, pursuant to paragraph (c) of this section; or

(2)(i) The expiration of the period of time granted pursuant to paragraph (c) of this section, and

(ii) The effective date of HUD's subsequent final determination that the State does not have in place by law or regulation a system that complies with 12 U.S.C. 5104, 5105, 5107(d), and this part.

Subpart C—HUD's Loan Originator Licensing System and Nationwide Mortgage Licensing and Registry System

§ 3400.201 Scope of this subpart.

The SAFE Act provides HUD with "backup authority" to establish a loan originator licensing system for any State that is determined by HUD not to be in compliance with the minimum standards of the SAFE Act. The SAFE Act also authorizes HUD to establish and maintain a nationwide mortgage licensing system and registry if HUD determines that the NMLSR is failing to meet the purposes and requirements of the SAFE Act for a comprehensive licensing, supervisory, and tracking system for loan originators. The provisions of this subpart become applicable to individuals in a State as provided in § 3400.115(e).

§ 3400.203 HUD's establishment of loan originator licensing system.

If HUD determines, in accordance with § 3400.115(e), that a State has not established a licensing and registration system in compliance with the minimum standards of the SAFE Act, HUD shall apply to individuals in that State the minimum standards of the SAFE Act, as specified in subpart B, which provides the minimum requirements that a State must meet to be in compliance with the SAFE Act, and as may be further specified in this part.

§ 3400.205 HUD's establishment of nationwide mortgage licensing system and registry.

If HUD determines that the NMLSR established by CSBS and AARMR does not meet the minimum requirements of subpart D of this part, HUD will establish and maintain a nationwide mortgage licensing system and registry.

Subpart D—Minimum Requirements for Administration of the NMLSR

§ 3400.301 Scope of this subpart.

This subpart establishes minimum requirements that apply to administration of the NMLSR by the Conference of State Bank Supervisors or by HUD. The NMLSR must accomplish the following objectives:

- (a) Provides uniform license applications and reporting requirements for State-licensed loan originators.
- (b) Provides a comprehensive licensing and supervisory database.
- (c) Aggregates and improves the flow of information to and between regulators.
- (d) Provides increased accountability and tracking of loan originators.

(e) Streamlines the licensing process and reduces the regulatory burden.

(f) Enhances consumer protections and supports anti-fraud measures.

(g) Provides 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.

(h) Establishes 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.

(i) Facilitates responsible behavior in the mortgage marketplace and provides comprehensive training and examination requirements related to mortgage lending.

(j) Facilitates the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.

§ 3400.303 Financial reporting.

To the extent that CSBS maintains the NMLSR, CSBS must annually provide to HUD, and HUD will annually collect and make available to the public, NMLSR financial statements, audited in accordance with Generally Accepted Accounting Principles (GAAP) promulgated by the Federal Accounting Standards Advisory Board, and other data. These financial statements and other data shall include, but not be limited to, the level and categories of funds received in relation to the NMLSR and how such funds are spent, including the aggregate total of funds paid for system development and improvements, the aggregate total of salaries and bonuses paid, the aggregate total of other administrative costs, and detail on other money spent, including money and interest paid to reimburse system investors or lenders, and a report of each State's activity with respect to the NMLSR, including the number of licensees, the State's financial commitment to the system, and the fees collected by the State through the NMLSR.

§ 3400.305 Data security.

(a) To the extent that CSBS maintains the NMLSR, CSBS must complete a background check on its employees, contractors, or other persons who have access to loan originators' Social Security numbers, fingerprints, or any credit reports collected by the system.

(b) To the extent that CSBS maintains the NMLSR, CSBS must keep and adhere to an appropriate information security and privacy policy. If the

NMLSR forms a reasonable belief that a security breach has occurred, it shall notify affected parties in a reasonable amount of time, including any loan originators or registrants whose data may have been compromised, and the employer of the loan originator or registrant, if such employer is also licensed through the system.

§ 3400.307 Fees.

CSBS or HUD, as applicable, may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry. Fees shall not be charged to consumers for access to such system and registry. If HUD determines to charge fees, the fees to be charged shall be issued by notice with the opportunity for comment prior to any fees being charged.

§ 3400.309 Absence of liability for good-faith administration.

HUD or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by HUD under 12 U.S.C. 5108 and in accordance with subpart C, or any officer or employee of HUD or HUD's designee, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

Subpart E—Enforcement of HUD Licensing System.

§ 3400.401 HUD's authority to examine loan originator records.

(a) *Summons authority.* HUD may:

(1) Examine any books, papers, records, or other data of any loan originator operating in any State which is subject to a licensing system established by HUD under subpart C of this part; and

(2) Summon any loan originator referred to in paragraph (a)(1) of this section or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before a HUD representative at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for

compliance with the requirements of the SAFE Act.

(b) *Examination authority.* (1) *In general.* If HUD establishes a licensing system under 12 U.S.C. 5107 and in accordance with subpart C of this part for any State, HUD shall appoint examiners for the purposes of ensuring the appropriate administration of the HUD licensing system.

(2) *Power to examine.* Any examiner appointed under paragraph (b)(1) of this section shall have power, on behalf of HUD, to make any examination of any loan originator operating in any State which is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of this part, whenever HUD determines that an examination of any loan originator is necessary to determine the compliance by the originator with minimum requirements of the SAFE Act.

(3) *Report of examination.* Each HUD examiner appointed under paragraph (b)(1) of this section shall make a full and detailed report to HUD of examination of any loan originator examined under this section.

(4) *Administration of oaths and affirmations; evidence.* In connection with examinations of loan originators operating in any State which is subject to a licensing system established by HUD under 12 U.S.C. 5107, and in accordance with subpart C of this part, or with other types of investigations to determine compliance with applicable law and regulations, HUD and the examiners appointed by HUD may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) *Assessments.* The cost of conducting any examination of any loan originator operating in any State which is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of this part shall be assessed by HUD against the loan originator to meet the Secretary's expenses in carrying out such examination.

§ 3400.403 Enforcement proceedings.

(a) *Cease and desist proceeding.* (1) If HUD finds, after notice and opportunity for hearing in accordance with subpart A of part 26, that any person is violating, has violated, or is about to violate any provision of the SAFE Act, the provisions of this part, or a provision of State law enacted or promulgated under the SAFE Act, to which the person is subject and with respect to a State that is subject to a

licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of this part, HUD may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation.

(2) The order authorized by paragraph (a)(1) of this section may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as HUD may specify in such order.

(3) Any order issued under paragraph (a)(1) of this section may, as HUD determines appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as HUD may specify, with such provision or regulation with respect to any loan originator.

(b) *Hearing.* The notice instituting proceedings in accordance with paragraph (a) of this section shall establish a hearing date not earlier than 30 days nor later than 60 days after the date of service of the notice unless an earlier or a later date is set by HUD with the consent of any respondent so served.

(c) *Temporary order.* (1) *Issuance of a temporary order.* Whenever HUD determines that the alleged violation or threatened violation specified in the notice instituting proceedings in accordance with paragraph (a) of this section, or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest prior to the completion of the proceedings, HUD may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as HUD determines appropriate pending completion of such proceedings.

(i) The order authorized by paragraph (c)(1) of this section shall be entered only after notice and opportunity for a hearing, unless HUD determines that notice and hearing prior to entry would be impracticable or contrary to the public interest.

(ii) The temporary order authorized by paragraph (c)(1) of this section shall become effective upon the date of service upon the respondent and, unless set aside, limited, or suspended by HUD or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(2) *Review of temporary orders.* (i) *Review by HUD.* At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (c)(1) of this section, the respondent may apply to HUD to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior hearing before HUD, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application, and HUD shall hold a hearing and render a decision on such application at the earliest possible time.

(ii) *Judicial review.* (A) Within 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior hearing before HUD or within 10 days after HUD renders a decision on an application and hearing under paragraph (b) of this section, with respect to any temporary cease-and-desist order entered without a prior hearing before HUD, the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order.

(B) A respondent served with a temporary cease-and-desist order entered without a prior hearing before the Secretary may not apply to the court, except after a hearing and decision by HUD on the respondent's application under paragraph (c)(2)(i) of this section.

(C) The commencement of proceedings under paragraph (b) of this section shall not, unless specifically ordered by the court, operate as a stay of HUD's order.

(d) *Authority of the secretary to prohibit persons from serving as loan originators.* In any cease-and-desist proceeding under this section, HUD may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as HUD shall determine, any person who has violated this title or regulations thereunder, from acting as a loan originator if the conduct of that person

demonstrates unfitness to serve as a loan originator.

§ 3400.405 Civil money penalties.

HUD may impose civil money penalties on a loan originator operating

in any State which is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of this part, as provided in 24 CFR 30.69.

Dated: November 11, 2009.

David H. Stevens,

Assistant Secretary for Housing-Federal Housing Commissioner.

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2009 Annual Report
State Regulatory Registry LLC

May 14, 2010

Increasing Consumer Protection • Enhancing State Supervision • Driving Uniform Licensing

Table of Contents

Letter from the SRR Board of Managers	ii
2009 Milestones	1
Organizational History and Background	2
NMLS Operating Highlights	3
SAFE Act	8
Education and Testing	11
Cooperative State Regulation and Supervision	14
NMLS Processing Fees	15
SRR Financial Report	17
Tables and Figures	18
Appendices	19

Letter from the SRR Board of Managers

May 14, 2010

Users of the Nationwide Mortgage Licensing System,

The Board of Managers presents the second annual report on the operations and performance of State Regulatory Registry LLC¹ (SRR) and the Nationwide Mortgage Licensing System and Registry (NMLS or the System).

2009 was a significant year for SRR and the System with implementation of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), NMLS participation by new states, system enhancements, and coordinated supervisory policies and examinations. All of these changes were part of a coordinated state effort through the Conference of State Bank Supervisors² (CSBS) and the American Association of Residential Mortgage Regulators³ (AARMR) to increase consumer protection, enhance state supervision and streamline the licensing process in the residential mortgage industry.

NMLS is a web-based application which enables state-licensed mortgage lenders, mortgage brokers, and loan originators to apply for, amend, update or renew licenses online with participating state agencies using a single set of uniform applications. The System benefits users by providing efficiency, uniformity and enhanced supervision. More information about NMLS can be found on the *NMLS Resource Center*⁴ website.

As the mortgage industry continued to struggle throughout 2009, NMLS provided state regulators and the mortgage industry with much needed information and greater transparency on licensed companies, branches and individuals. With the remaining states' transition onto NMLS in 2010, information and trends provided by the System will become more complete and invaluable to consumers, regulators and industry.

In 2009, 14 new states and territories began using NMLS as the system of record for their licensees, bringing the total number of states on the System to 33. In January 2010, an additional 12 states began using NMLS (bringing the total to 45 states and territories). It is expected that the remaining states will require their licensees to transition onto NMLS in 2010.

In 2009, implementation of the SAFE Act was a high priority for the states and SRR. During the year, the states met multiple mandates put forth by the SAFE Act, including: (1) 49 states, the District of Columbia and the Virgin Islands introduced and passed SAFE Act enabling legislation; (2) a national test component on federal laws and ethics and 25 state-law test components were developed and made available to state-licensed mortgage loan originators; (3) education standards and procedures for pre-licensure and continuing education courses and course providers were implemented; and (4) development of consumer access and criminal background checks were completed and launched in January 2010.

States, territories and the industry played key roles in providing the resources to make 2009 a successful year for SRR and NMLS. Throughout the year, states and industry staffed numerous committees, task forces and working

1 State Regulatory Registry LLC is a wholly owned subsidiary of CSBS and operates the Nationwide Mortgage Licensing System and Registry (NMLS) on behalf of state mortgage regulators. Voting members of the Board of Managers consist of six state mortgage regulators. Formed in 2006, SRR is a non-profit corporation based in Washington, D.C.

2 The Conference of State Bank Supervisors (CSBS) is the nationwide organization for state bank regulation, representing the bank regulators of the 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. State authorities supervise approximately 6,000 state-chartered financial institutions. Further, the majority of state banking departments also oversees mortgage providers and other financial service providers. CSBS is also responsible for improving the quality of state bank supervision by providing performance evaluation and accreditation programs for the banking departments, as well as supervisory education and training programs for state personnel.

3 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 responsibility for the administration and regulation of residential mortgage lending, servicing and brokering.

4 <http://mortgage.nationwidelicencingsystem.org>

Letter from the SRR Board of Managers

groups including the Mortgage Licensing Policy Committee (MLPC), Mortgage Testing and Education Board (MTEB), Residential Mortgage Regulatory Taskforce (RMRT) and Mortgage Advisory Council (MAC). In 2009, states contributed in excess of \$6.6 million to develop NMLS, for total state contributions since NMLS's inception of \$13.7 million.

SRR held two successful NMLS user conferences for industry and regulators in early 2009 and 2010. States also made significant progress on coordinated supervision of mortgage entities through multi-state examination procedures and supervisory actions.

In the next several years, SRR will focus on transitioning the final states onto NMLS; continued implementation of and compliance with the SAFE Act; working with the federal banking and farm credit regulators to register mortgage loan originators; and expanding and improving NMLS functionality, operations and services.

Sincerely,

State Regulatory Registry LLC Board of Managers

Gavin Gee, Chairman and Director, Idaho Department of Finance
William Haraf, Treasurer and Commissioner, California Department of Financial Institutions
Thomas Gronstal, Manager and Superintendent, Iowa Division of Banking
David Bleicken, Manager, AARMR Representative and Deputy Secretary, Pennsylvania Department of Banking
John Allison, Manager and Commissioner, Mississippi Department of Banking and Consumer Finance
Steven Antonakes, Manager and Commissioner, Massachusetts Division of Banks
Joseph Smith*, Manager, CSBS Chairman and Commissioner, North Carolina Office of Commissioner of Banks
Neil Milner*, Secretary, Manager and CSBS President and CEO
William Matthews*, Manager and SRR President and CEO

**Non-voting members of the SRR Board of Managers*

In 2009, SRR spent significant resources to transition states onto NMLS, increase System functionality to meet SAFE Act requirements, and enhance NMLS operations for industry and state mortgage regulators. Major milestones achieved by the states, SRR and NMLS during the year include:

- (1) 14 new states and territories began using NMLS as the system of record for its licensees, bringing the total number of states participating on the System to 33 by year-end 2009.
- (2) 49 states, the District of Columbia and the Virgin Islands passed SAFE Act enabling legislation.
- (3) NMLS developed and launched a national test and 25 unique state test components for mortgage loan originators. Over 25,000 test components were administered.
- (4) NMLS developed policies and procedures to approve course providers and courses. A total of 152 course providers were approved nationwide. By year-end 2009, these providers had a combined total of 248 approved courses and delivered more than 420,000 hours of education.
- (5) SRR established the Mortgage Testing and Education Board (MTEB) to approve courses and providers and conduct administrative procedures concerning testing and education matters.
- (6) NMLS developed a testing and education certification process by which mortgage loan originators can have previously completed state testing and education recognized for SAFE Act requirements.
- (7) SRR established the position of NMLS Ombudsman.
- (8) NMLS managed 106,537 unique entities (companies, branches and mortgage loan originators) that held 134,731 state licenses from the 33 participating states.
- (9) HUD's proposed SAFE Act rule indicates that state agencies that meet the CSBS/AARMR Mortgage Accreditation program standards are considered compliant with the SAFE Act supervisory performance standards.
- (10) NMLS collected and disbursed more than \$33 million in state license fees.
- (11) NMLS Call Center answered more than 200,000 inquiries from users.
- (12) The *NMLS Resource Center* received 1.3 million visits.
- (13) SRR conducted more than 36 live user training sessions, instructing over 1,000 professionals.

Organizational History and Background

State Regulatory Registry LLC

State Regulatory Registry LLC (SRR) is a wholly owned subsidiary of the Conference of State Bank Supervisors (CSBS) and operates the Nationwide Mortgage Licensing System and Registry (NMLS or the System) on behalf of state mortgage regulatory agencies. SRR is governed by a six-member Board of Managers comprised of state banking commissioners and a representative of the American Association of Residential Mortgage Regulators (AARMR). The SRR Board of Managers is responsible for all development, operations and policy matters concerning NMLS.

At the end of 2009, SRR employed 20 full-time professionals in Washington, DC who work under the direction of the SRR Board of Managers to develop and operate NMLS, administer the testing and education programs, and facilitate the working groups of state regulators and industry members related to state licensing, supervision, and NMLS policy. Additionally, SRR contracts with a number of firms to deliver various portions of NMLS functionality and program oversight.

Mortgage Licensing Policy Committee

In 2008, the SRR Board of Managers created the Mortgage Licensing Policy Committee (MLPC) to assist in decision-making and handling operational and policy matters related to NMLS operations and development. The MLPC is comprised of 11 state mortgage regulators.

Mortgage Testing and Education Board

In September 2009, the SRR Board of Managers created the Mortgage Testing and Education Board (MTEB). The MTEB is comprised of nine state regulators representing each of the CSBS Districts and at least one AARMR representative. More details on the MTEB can be found in the Education and Testing section.

Mortgage Advisory Council

In 2008, the SRR Board of Managers created the Mortgage Advisory Council (MAC) to provide industry input on system policies and operations. MAC members consist of mortgage lenders and brokers and industry trade associations.

Membership of the MLPC, MTEB and MAC can be found in Appendix C.

NMLS Ombudsman

In August 2009, the SRR Board of Managers created the position of NMLS Ombudsman. The Ombudsman provides the mortgage industry and other interested parties with a neutral venue to discuss issues or concerns regarding NMLS and/or mortgage licensing. The objective of the Ombudsman is to foster constructive dialogue between industry users of NMLS and state regulators to mutually work toward the goal of modern and efficient mortgage regulation.

The Ombudsman is a member of the MLPC and reports directly to the SRR Board of Managers.

The first Ombudsman is Deborah Bortner, Director of Consumer Services, Washington Department of Financial Institutions. The Ombudsman is scheduled to meet with industry representatives twice a year.

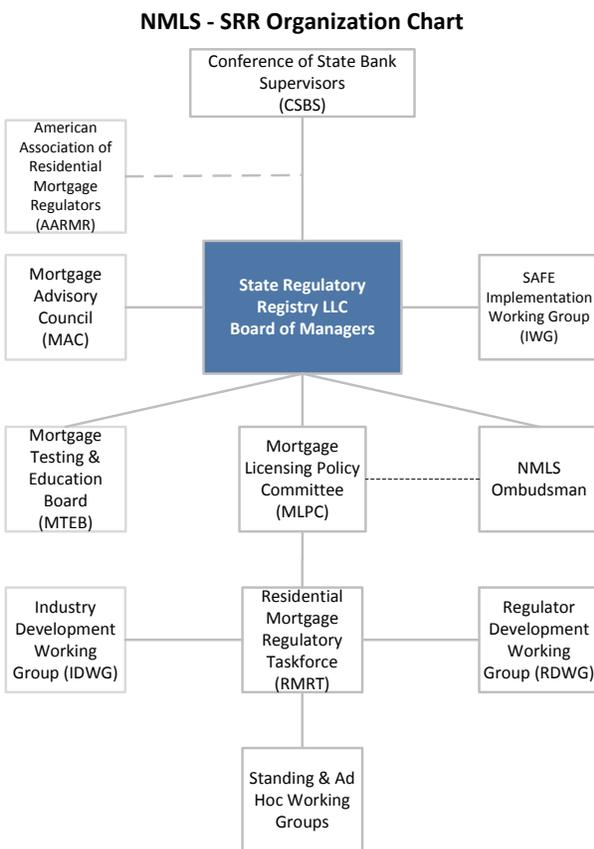


Figure 1. NMLS - SRR Organization Chart

NMLS Operating Highlights

NMLS Operations

In 2009, NMLS added 14 new states, bringing the total to 33 states and territories using NMLS to manage mortgage licensing and become its system of record. Total company, branch and mortgage loan originator licenses being managed on NMLS at year-end 2009 were 134,731, a 49 percent increase from the 90,176 licenses the prior year (Figure 2).

Company and Individual Licenses Managed in NMLS

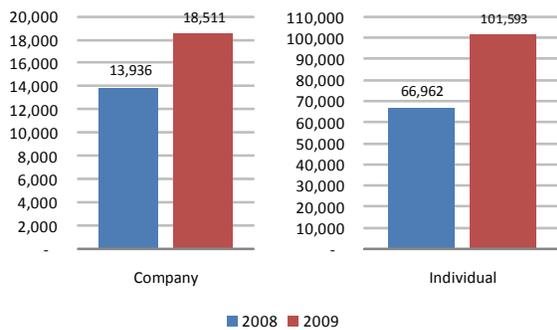


Figure 2. Company and Individual Licenses Managed in NMLS

NMLS processes a variety of transactions for system users as regulators supervise and licensees apply for and/or maintain a license. As noted in Figure 3, a total of 412,430 transactions were processed by NMLS in 2009. The most common transactions are amendments and renewals. An amendment occurs each time a licensee record is updated. Renewals are submitted annually.

2009 NMLS Transactions by Type

Transaction Type	Company	Branch	Individual	Total	% of Total
Transition Requested	4,487	1,501	9,035	15,023	4%
New License Requested	2,520	5,622	40,375	48,517	12%
License Amendment	54,614	13,226	104,691	172,531	42%
Renewal Requested	13,880	10,814	58,836	83,530	20%
Surrender Requested	1,923	1,927	1,412	5,262	1%
Sponsorship Request			52,955	52,955	13%
Sponsorship Removal			32,026	32,026	8%
Other	386	688	1,512	2,586	1%
TOTAL	77,810	33,778	300,842	412,430	100%

Figure 3. 2009 NMLS Transactions by Type

In 2009, 83,530 company, branch and individual renewal requests were submitted through NMLS for company, branch and individual licenses in 27 states that required renewal. This represents an 88 percent increase from 2008 when 17 states processed renewals through NMLS (Figure 4).

⁵ Many states passed SAFE Act enabling legislation that expanded or required new individual and company licensure. Estimated license counts were based on the existing or expected number of licensees.

Annual Renewals Processed in NMLS

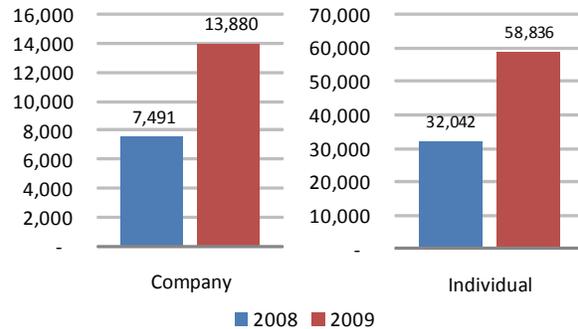
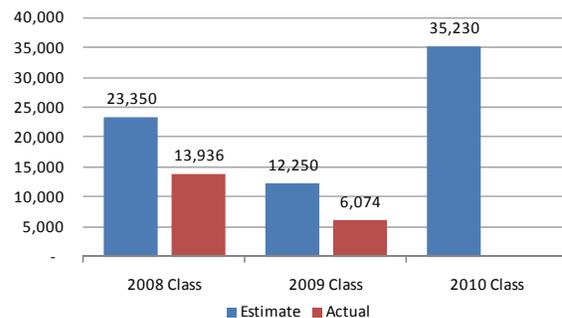


Figure 4. Annual Renewals Processed in NMLS

While 14 new states and their licensees joined NMLS in 2009, the overall number of licensed companies and individuals continued to decline dramatically as a result of depressed housing and real estate economic conditions. For the states transitioning onto NMLS in 2008 and 2009, Figure 5 shows the states' estimate⁵ of the number of licensed company and individual licensees (blue bars), compared with the number of licensees that actually transitioned onto the System (red bars).

The number of licenses that transitioned onto NMLS was significantly lower than the state-estimated

Transition: Company Licenses



Transition: Individual Licenses

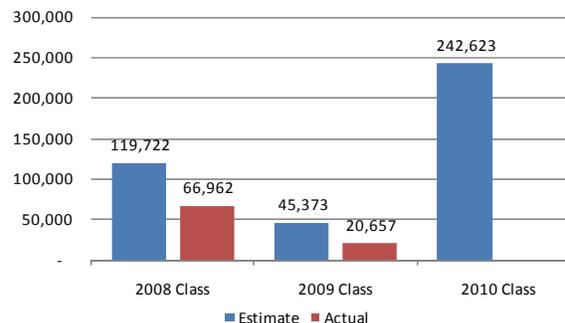


Figure 5. Transition: Company & Individual Licenses

NMLS Operating Highlights

number of licensed companies, branches and individuals. In 2009, for example, 50 percent of the estimated number of company and 46 percent of individual mortgage loan originator licenses actually transitioned onto NMLS.

As populous states such as California, Florida, Illinois, New Jersey, Ohio and Texas transition onto NMLS in 2010, the estimated number of company (35,230) and individual licenses (242,623) is approximately the same as the combined totals for 2008 and 2009.

As the system of record for state mortgage regulatory agencies, NMLS is able to track the number of unique companies and individuals, as well as the number of licenses they hold in participating states. As of year-end 2009, NMLS managed 12,627 unique companies and 79,185 individuals with a state license or pending application (Figure 6). The 2008-2009 increase in the number of unique companies and individuals managed in NMLS is primarily due to the number of additional states using the System.

Individual mortgage loan originators held, on av-

Unique Company & Individual Entities Managed in NMLS

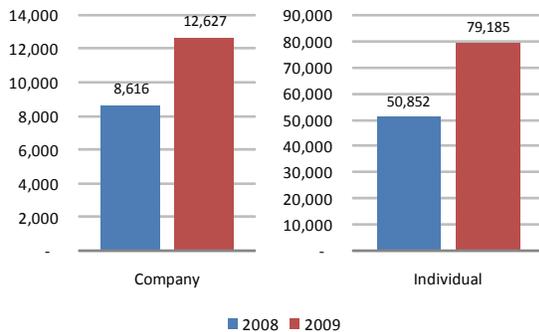


Figure 6. Unique Company & Individual Entities Managed in NMLS

Individual Licenses Managed in NMLS

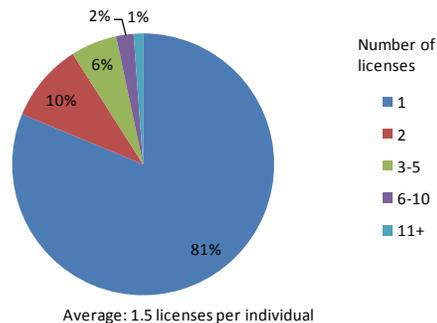


Figure 7. Individual Licenses Managed in NMLS

erage, 1.5 state licenses (Figure 7). A total of 81 percent of individuals held one license, and one percent held more than 11 or more licenses.

Transitioning onto NMLS

Similar to 2008, SRR devoted considerable effort in 2009 to prepare new states to transition their licensees and licensing process onto NMLS (Figure 8). Much of this effort was devoted to the group of twelve states which began using NMLS for the first time in January 2010. These states license an estimated 150,000 company, branch and individual licensees.

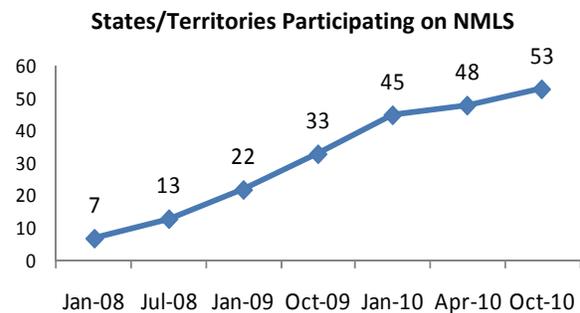


Figure 8. States/Territories Participating on NMLS

Preparing state agencies to use NMLS is a six-month process covered through weekly conference calls, three days of in-person training and various webinars. In 2009, in-person training was conducted in various east and west coast locations.

SRR also provided training to industry users on how to start and proficiently use the System. In 2009, SRR held more than 36 live user training sessions for industry and regulatory users, providing instruction to approximately 1,000 professionals. Online tutorials and navigation guides are also maintained on the *NMLS Resource Center* website to help licensees use the System.

NMLS 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, processing annual renewal requests and scheduling examinations.

By assisting users in navigating through a new electronic system, the NMLS Call Center plays a key role in the System's success. Figure 9 provides 2009 statistics for call center activity. The NMLS Call Center experienced its highest activity in 2009 during an-

NMLS Operating Highlights

nual renewal, state transition deadlines and implementation of new functionality. The peak in March 2009, as shown in Figure 9, was due to both state deadlines and the release of NMLS financial statement functionality. The increased volume in November and December was generated by the annual renewal process.

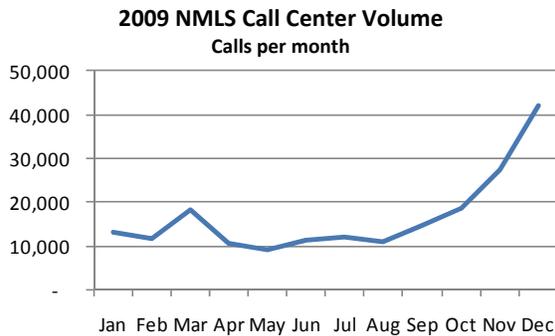


Figure 9. 2009 NMLS Call Center Volume (Calls per month)

The NMLS Call Center is open from 9:00 AM to 7:00 PM ET. Call center staffing also increased during the year to meet demand as additional states transitioned onto the System. At year-end 2009, the NMLS Call Center employed 39 full-time professionals. Figure 10 compares 2008 and 2009 call volume and statistics.

The NMLS Call Center is funded through the NMLS processing fees and operates at no additional charge to System users.

2008 & 2009 Call Center Volume and Statistics

	2008	2009
Total Calls	147,758	201,280
Average Speed Of Answer (Seconds)	79	47
Abandon Rate	4%	2%
Average Call Duration (Seconds)	526	430

Figure 10. 2008 & 2009 Call Center Volume and Statistics

NMLS Resource Center Website

The *NMLS Resource Center* website serves as the gateway to NMLS. It provides NMLS users with state licensing information and deadlines, training materials and tools and tips to assist licensees with their use of NMLS. This year the *NMLS Resource Center* website added an area for Professional Requirements to provide instructions, requirements and helpful resources regarding testing, and education and background check requirements for mortgage loan originators. Another

section was added to allow education providers to apply for and become approved by the NMLS to deliver pre-licensure and continuing education courses.

With more states joining NMLS and new requirements coming into effect, the *NMLS Resource Center* has played a critical role in guiding licensees through the process and serving as a clearing house for critical news alerts and information.

The *NMLS Resource Center* website had 1.3 million visitors who viewed 4.4 million pages in 2009. Because of the increased demands upon the site in October 2009, the *NMLS Resource Center* was rebuilt on a new platform to allow for easier maintenance and improved user experience.

NMLS User Conference & Training

The inaugural NMLS User Conference and Training was held February 10-12, 2009 in New Orleans, Louisiana. The conference consisted of combined general sessions along with regulatory and industry breakout sessions. Speakers included state regulators, industry users, officials from the U.S. Department of Housing and Urban Development (HUD), NMLS Call Center personnel, and SRR staff.

The 2010 Annual NMLS User Conference and Training was held February 9-11, 2010 in San Diego, California. The second conference brought together nearly 300 state and federal regulators, mortgage companies, banks, law firms, education providers, and consultants to discuss matters relating to NMLS and the SAFE Act.

2009 NMLS Users Conference Panel



Figure 11. 2009 NMLS Users Conference Panel

NMLS Operating Highlights

NMLS Functionality Enhancements

NMLS design and development, including the uniform application, Mortgage Uniform (MU) Forms, is accomplished through various working groups, taskforces and committees populated by state mortgage regulators, industry and SRR staff. Countless volunteer hours have gone into this process and have been key to NMLS' design and smooth operations.

By January 2009, the System consisted of core filing and renewal functionality for regulators and industry users, data download capabilities, standard industry and regulatory reporting on NMLS data, system notifications and automated company entitlement. During 2009 and January 2010, additional functionality was added through four major system releases that included:

- (1) Automated financial statement submission
- (2) Expanded regulator access
- (3) Additional standard reports
- (4) Renewal process enhancements
- (5) MU Form changes
- (6) SAFE Act-requirements:
 - a. Testing and education
 - b. Fingerprinting
 - c. Consumer Access

Items Issued for Public Comment

Active and archived proposals issued for public comment are available on the *NMLS Resource Center* website. The following three proposals were issued in 2009:

- (1) On May 7, 2009, comments were requested on the policies and fees associated with NMLS Testing and Education Services.
- (2) On September 14, 2009, comments were requested on NMLS Background Check Processing.
- (3) On November 4, 2009, comments were requested on proposed changes to the fees associated with NMLS Education Services.

Public comments are used by the SRR Board of Managers and staff as part of the decision making process on major system or policy issues.

Security, Privacy or Breach Issues

SRR did not experience any material issues related to security, privacy or information breach in 2009. NMLS' Privacy, Data Security and Security Breach Notification Policy is available on the *NMLS Resource Center* website⁶.

Legal Issues

SRR did not have any material adverse legal issues in 2009.

NMLS Online User Agreement Amendment

There are two NMLS online agreements that govern the use of NMLS: the Applicant-Licensee User Agreement and the State Agency User Agreement. In 2009, there were no changes to the Applicant User Agreement. The State Agency User Agreement was amended in July 2009. The change in the State Agency User Agreement amends the online agreement to:

- (1) Change the agreement into a terms of use in order to eliminate the need for a written letter agreement with each state agency.
- (2) Adding satisfaction of testing and education requirements to the definition of Applicant Data.
- (3) An expansion of NMLS authority to use licensee contact information to include NMLS communications concerning mortgage licensing issues.
- (4) Authority to check Applicant Data against other state and federal regulatory agency, Social Security Administration or financial services/securities industry self-regulatory organization (SRO) databases.
- (5) Authority to share Applicant Data with relevant state or federal Regulatory Agencies and financial services or securities industry SROs subject to appropriate usage agreements.

Copies of the User Agreements are available on the *NMLS Resource Center* website.⁷

⁶ <http://mortgage.nationwidelicencingsystem.org/about/policies/Pages/SystemPrivacyPolicy.aspx>

⁷ <https://www.statemortgageregistry.com/Public/Login.aspx>

NMLS Consumer Access

In order to provide homebuyers and the general public with greater information concerning the companies and professionals in the mortgage industry, SRR launched *NMLS Consumer Access*, a fully searchable website that allows the public to view information concerning companies, branches, and individuals licensed and registered by state regulatory agencies through NMLS. One of the goals set by state regulators when designing NMLS was to provide a central source of standardized information concerning mortgage companies and professionals that promotes transparency throughout the states. Additionally, the SAFE Act requires that NMLS provide consumers with easily accessible information, offered at no charge, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, state-licensed and federally registered mortgage loan originators. In *NMLS Consumer Access*, SRR combined the goals of state regulators with SAFE Act requirements to create a nationwide website of mortgage licensing and registration information (Figure 12).

NMLS Consumer Access Home Page

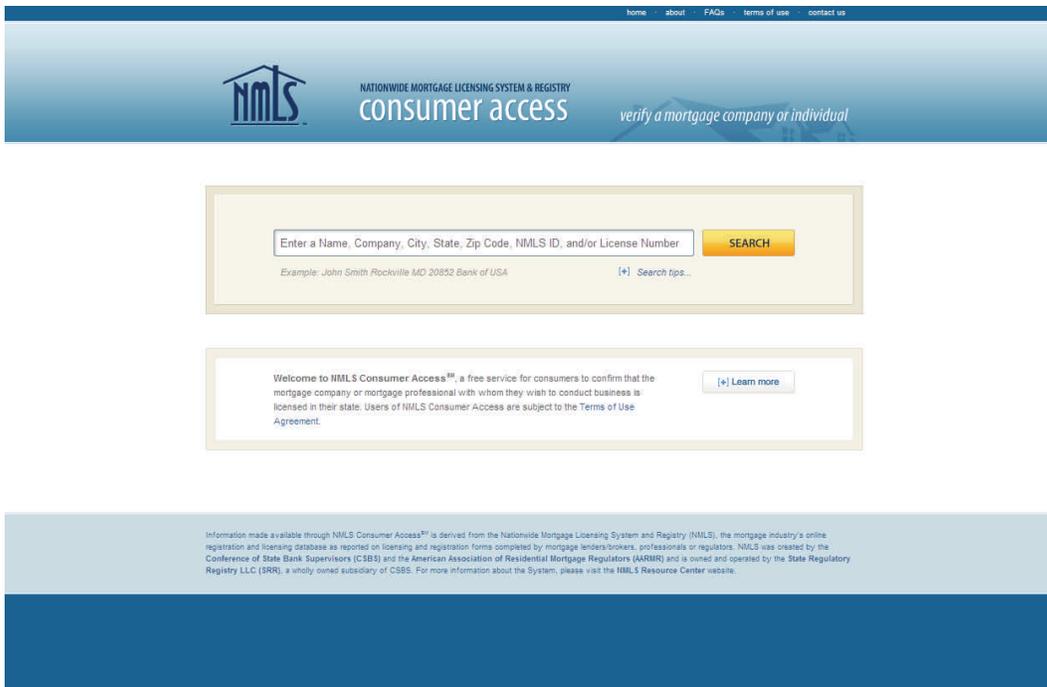


Figure 12. NMLS Consumer Access Home Page

SAFE Act

Overview

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), contains provisions to enhance consumer protection and reduce mortgage fraud by requiring states to establish minimum standards for the licensing or registration of all mortgage loan originators. The law provides that mortgage loan originators who work for an insured depository, an owned or controlled subsidiary regulated by a federal banking agency, or for an institution regulated by the Farm Credit Administration, must be registered. All other mortgage loan originators must be licensed by the states. All mortgage loan originators must be licensed or registered through NMLS.

The SAFE Act gave states one year to pass legislation establishing these licensing and registration requirements. As the states moved to pass legislation throughout 2009 (Figure 13), uniformity in mortgage regulation was fostered and driven as the existing state licensing laws were revised in a consistent manner to

establish standardized applications, processes, requirements and practices across the nation.

State Implementation

After the SAFE Act’s enactment, state regulators immediately began the work of implementing the law, including development of a model state law to implement mortgage regulation that incorporated the standards in the SAFE Act⁸. The Model State Law included standardized definitions, nationwide prelicensure and continuing education, nationwide testing requirements, and financial responsibility and criminal background standards for mortgage loan originators. In a January 5, 2009 notice in the Federal Register⁹, HUD formally stated that “HUD has reviewed this model legislation and finds that it meets the minimum requirements of the SAFE Mortgage Licensing Act.”

Relying on the Model State Law, state legislatures moved in a focused and efficient manner to enact SAFE Act implementing legislation in 49 states, the District of Columbia, and the Virgin Islands in one year of the Act’s passage. State enactment of the

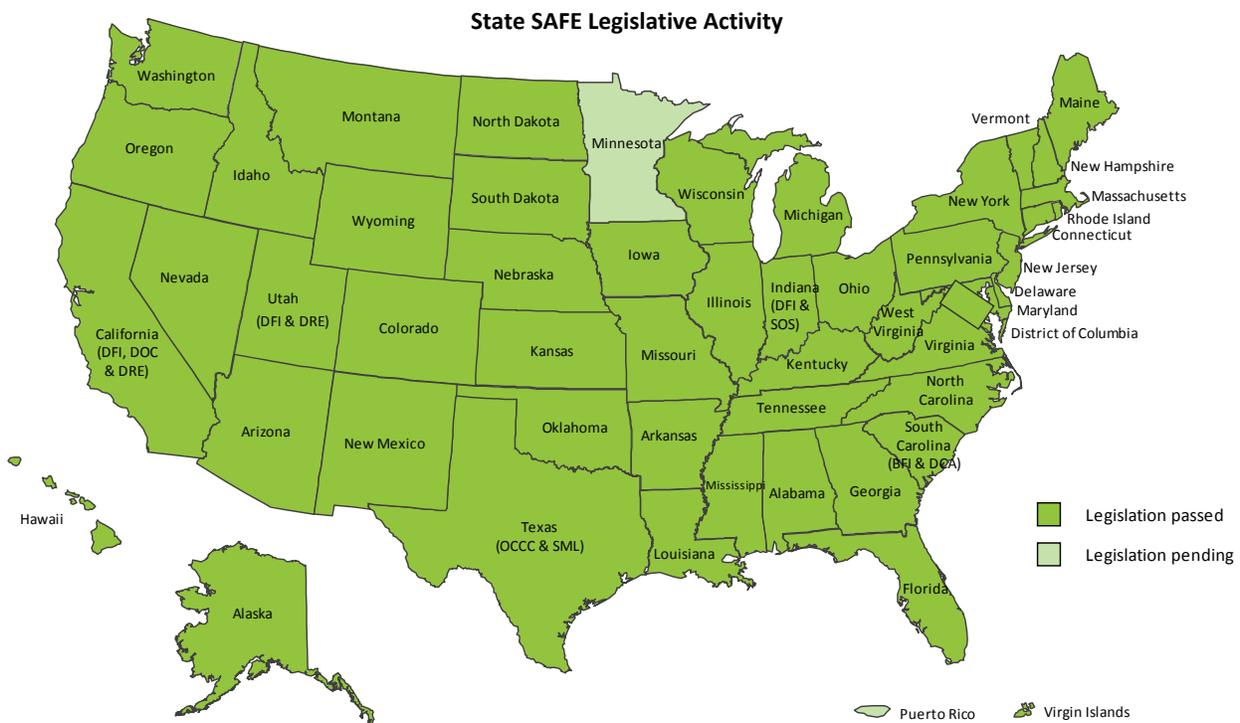


Figure 13. State SAFE Legislative Activity

8 The CSBS/AARMR Model State Law can be found online at: <http://mortgage.nationwidelicencingsystem.org/safe/Pages/default.aspx>.

9 A copy of the S.A.F.E. Mortgage Licensing Act Notification of Availability of Model Legislation can be found online at: <http://mortgage.nationwidelicencingsystem.org/safe/Pages/default.aspx>.

model state law was formally endorsed by the National Conference of State Legislatures and the National Conference of Insurance Legislators. The few remaining jurisdictions (as shown in Figure 13) have developed legislative proposals that will be considered during the 2010 legislative sessions. Mortgage licensing laws are far more uniform today than ever before, establishing a foundation for better mortgage supervision.

State SAFE Act Requirements

The SAFE Act requires state-licensed mortgage loan originators to pass a written qualified test, to complete pre-licensure education courses, and to take annual continuing education courses (Figure 14). The SAFE Act also requires registered and licensed mortgage loan originators to submit fingerprints to NMLS for submission to the Federal Bureau of Investigation (FBI) for a criminal background check, and state-licensed mortgage loan originators to provide authorization for NMLS to obtain an independent credit report.

State legislation must also establish financial responsibility standards and require that all mortgage loan originators are covered by a surety bond, net worth requirements, 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’s mortgage loan originator licensing standards are not in compliance with federally mandated minimums, then HUD must implement a system to license mortgage loan originators in that state in accordance with the SAFE Act. HUD’s regulation would be in addition to any state licensing requirements.

As the states completed the process of enacting SAFE enabling legislation, HUD began the process of reviewing those new laws for compliance with the federal law. In late 2009, HUD released a proposed rule, “SAFE Mortgage Licensing Act: HUD Responsibilities” (under the SAFE Act) which is anticipated to be finalized in 2010. The proposed rule clarifies and expands upon the SAFE Act provisions, and HUD will base its determination of state compliance on the language contained in the final rule. The proposed rule provides that a supervisory authority that is accredited under the CSBS/AARMR Mortgage Accreditation Program will be presumed by HUD to be compliant with required performance standards.

NMLS SAFE Act Requirements

In addition to mandating state laws and regulations to meet certain minimum requirements, the SAFE Act contained seven specific mandates for NMLS. To date, five of these mandates have been fully implemented. These include:

- (1) Establishing protocols for the issuance of unique identifiers. This mandate was accomplished at system launch, and as of year-end 2009 more than 13,000 mortgage companies and 87,000 mortgage loan originators have obtained a NMLS Unique ID number.
- (2) Receiving and processing of fingerprints for federal criminal history background checks for all residential mortgage loan originators. An automated, streamlined federal criminal background check process was implemented in NMLS on January 25, 2010. This system includes a national network of over 850 sites for capturing fingerprints electronically with the

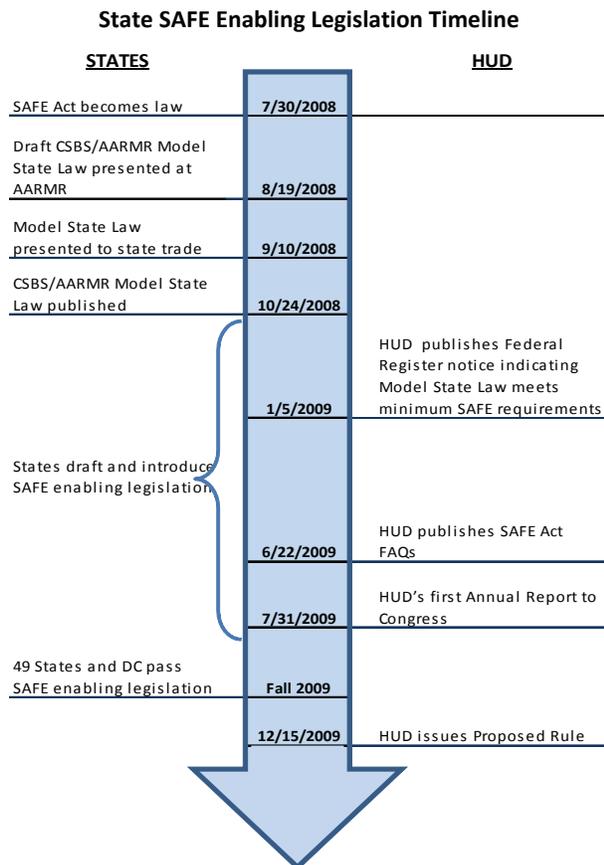


Figure 14. State SAFE Enabling Legislation Timeline

SAFE Act

ability for a mortgage loan originator to provide prints and request a single, criminal background check in any state or U.S. territory for a license application or applications in one or more other states or U.S. territories. In the first two weeks of operation, over 5,800 mortgage loan originators requested criminal background checks through this automated process. These criminal histories will be reviewed by state regulators to ensure SAFE Act standards are met.

- (3) Developing and administering a qualified written test. NMLS worked with test development professionals to launch the national component of the SAFE mortgage loan originator test on July 30, 2009. Developed with input from industry and regulatory experts, this entry level test evaluates an individual's knowledge of the basic federal law, mortgage products, ethics, and business practices necessary to be a professional mortgage loan originator. By year-end 2009, 17,099 individuals had taken the national test component. NMLS also developed 25 unique state test components and by year-end 2009, 10,724 individuals had taken the state test components.
- (4) Review and approval of pre-licensure and continuing education courses. NMLS developed an education provider and course approval process that launched in June 2009. NMLS-approved providers can offer NMLS-approved courses that meet the SAFE Act pre-licensure and continuing education requirements in all states. By year-end 2009, there were 152 NMLS-approved course providers, 248 NMLS approved courses, and more than 420,000 classroom hours of approved education were delivered.
- (5) Providing public access to licensing information on all residential mortgage licensed loan originators. On January 25, 2010, NMLS launched *NMLS Consumer Access*, a website that provides consumers with basic information concerning state-licensed mortgage loan originators, free of charge.

The two remaining NMLS mandates are:

- (1) Development of a Mortgage Call Report. Prior to the SAFE Act, most states required companies to submit financial statements, and 38 states required an annual report of mortgage activity. A working group of state regu-

lators developed a discussion draft of a Mortgage Call Report that seeks to replace these reports with a uniform set of requirements that will provide state regulators and the industry with the information necessary to better monitor the status of non-depository mortgage companies. The Mortgage Call Report is proposed to be completed by any company that employs licensed mortgage loan originators. In 2010, SRR will put out for public comment a discussion draft of the NMLS Mortgage Call Report, which will be available on the *NMLS Resource Center*. The NMLS Mortgage Call Report is expected to be available in 2011.

- (2) Availability of publicly adjudicated disciplinary and enforcement actions. A working group of state regulators has begun drafting the policies and processes necessary to make public enforcement actions taken by regulators against mortgage companies and mortgage loan originators available on *NMLS Consumer Access*. The functionality is expected to be available in 2011.

SAFE Act Mandates for NMLS

Description	Status
Establish protocols for issuance of a NMLS Unique ID number.	
Receive and process fingerprints for criminal history background checks for all loan originators.	
Develop a written, qualified mortgage test and approve test providers.	
Review and approve, using reasonable standards, pre-licensure and continuing education courses.	
Develop a mortgage call report.	2011 (tentative)
Provide public access to licensing information.	
Provide information on disciplinary actions.	2011 (tentative)
Process consumer complaints.	TBD

Figure 15. SAFE Act Mandates for NMLS

Summary

In 2009, NMLS reached a number of critical milestones in its implementation of SAFE Act testing and education requirements. NMLS:

- (1) Selected a vendor to develop and maintain tests, administer them and support education activities.
- (2) Developed and launched a national and 25 unique state test components (Figure 16). More than 27,000 test components have been administered.
- (3) Developed policies and procedures to approve courses.
- (4) Approved 152 course providers who delivered 420,000 hours of education through 248 NMLS-approved courses.
- (5) Established the Mortgage Testing and Education Board (MTEB).
- (6) Developed a testing and education certification process by which mortgage loan originators can have previously completed state testing and education recognized. NMLS also developed internal infrastructure to implement and support ongoing testing and education requirements.

The rest of this section describes these accomplishments.

Background

The SAFE Act established 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. Under the SAFE Act, NMLS must:

- (1) Develop a qualified written test which all state-licensed mortgage loan originators must take and pass with a minimum passing score of 75 percent.
- (2) Approve all courses which state-licensed mortgage loan originators must take to satisfy either their pre-licensure education or their continuing education requirements.

Vendor Selection

In January 2009, the SRR Board of Managers approved the proposal submitted by the Financial Industry Regulatory Authority, Inc. (FINRA) and its subcontractor Pearson VUE to implement the testing and education requirements mandated by the SAFE Act.

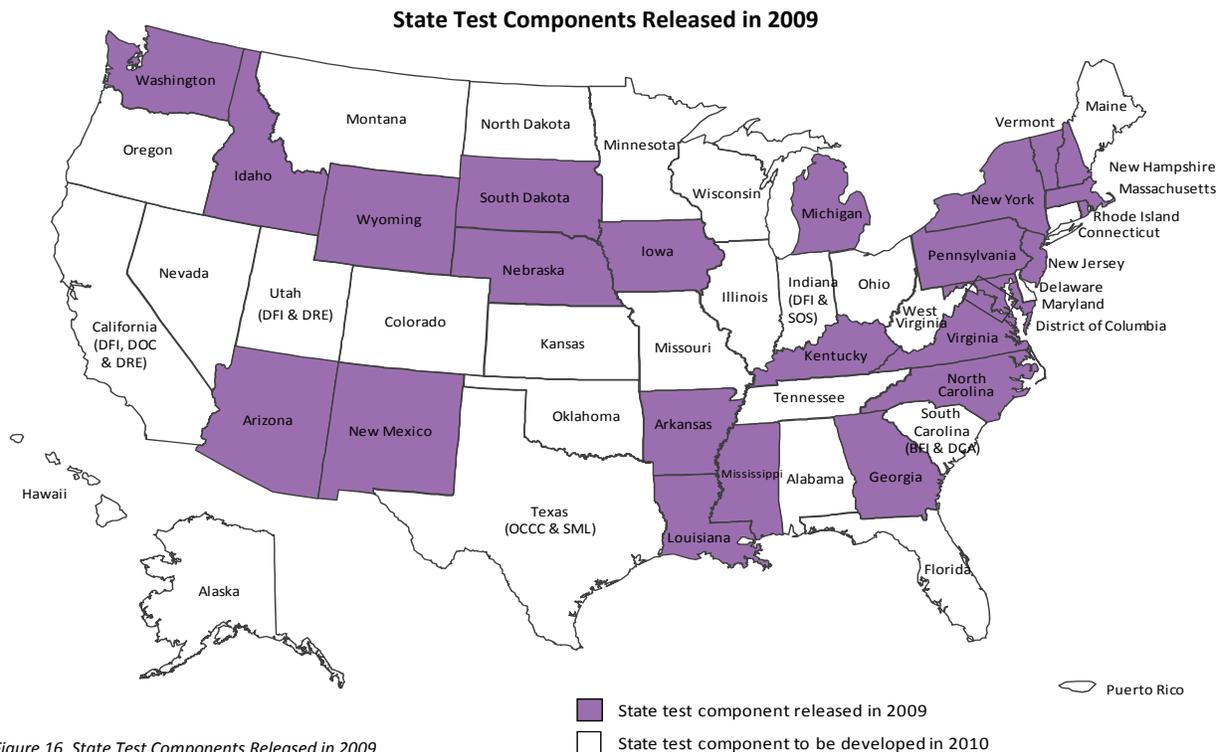


Figure 16. State Test Components Released in 2009

Education and Testing

FINRA is the largest non-governmental regulator for securities firms doing business in the United States. It has over 50 years of experience delivering license examinations for the securities industry. Pearson VUE, a business unit of NCS Pearson, Inc., is a major mortgage licensing examination provider and a nationally recognized administrator of financial certification examinations.

Test Development

FINRA and Pearson VUE led the development of a SAFE mortgage loan originator test which featured two parts: a national test component and a state test component. The national component and 11 unique state test components were developed and launched on July 30, 2009, one year after the passage of the SAFE Act. By year-end 2009, 25 unique state test components had been launched. Figure 16 illustrates the states for which a state test component was developed and launched in 2009.

The national component of the SAFE Act mortgage loan originator test includes questions concerning federal mortgage-related laws, mortgage loan originator activities, general mortgage knowledge, and ethics. There are 100 questions on the national test—90 questions are scored and 10 are unscored. Each unique state test component includes the following topic areas: the state's specific regulatory authority; state law and regulation definitions; state license law and regulation; compliance; and disciplinary action. Each state is able to customize or adjust the state specific test component to meet its specific needs. State test components can vary in length between 55 and 65 questions—45 to 55 of the questions are scored and 10 of them are unscored.

More than 90 subject matter experts from across the country participated in the development of the national test component. An additional 150 subject matter experts participated in the development of the state test components.

Additionally, in April 2009, a job analysis survey was conducted to provide further insight into the National Component Content Outline. More than 10,000 industry professionals and regulators participated in the survey. The results of the National Job Analysis confirmed the content and weightings of the existing National Content Outline.

Test Administration

The first test components – the national and 11 unique state test components were available to mort-

gage loan originators for testing on July 30, 2009. By year-end 2009, more than 27,000 test components had been taken.

Mortgage loan originators are able to take any of the test components at more than 500 test centers throughout the United States and its territories. The test centers are owned and operated by two FINRA sub-contractors: Pearson VUE and Prometric.

Figure 17 reflects the number of test components administered in 2009, the number of components which were successfully passed and the pass rates for the national component and a state aggregate.

NMLS periodically updates and posts test performance information on the *NMLS Resource Center* website.

2009 National and State Test Components

	National Test Component	Aggregate State Test Components
Test Components Taken	17,099	10,724
Test Components Passed	11,667	8,050
Pass Rate	68%	75%

Figure 17. 2009 National and State Test Components

In 2010, the remaining state test components are scheduled to be developed and deployed. Also, each existing test component (both national and state specific) will undergo a maintenance cycle, which involves psychometric analysis and formal test contest review meetings with the test development subject matter expert committees.

Education

NMLS developed policies, procedures and configured computer applications to approve course providers which would offer NMLS-approved pre-licensure and continuing education courses.

The State Testing and Education Subgroup of the Implementation Work Group, comprised of 17 state regulators representing 14 state agencies, proved critical to the development of education policies and procedures. This group was formed in August 2008 and worked closely with SRR staff to develop and approve the policies which would be used to carry out the SAFE Act requirements. Additional support was provided by an Industry Testing and Advisory Committee comprised of 16 individuals from the education industry including state trade associations. This group pro-

vided critical feedback regarding the practical application of the course provider and course approval policies, procedures and systems.

On June 22, 2009, NMLS began accepting applications from organizations to become approved course providers. By July 15, 2009, NMLS began accepting applications for course approvals, and by September 1, 2009, providers were offering NMLS-approved courses to mortgage loan originators to help them satisfy their 20-hour pre-licensure SAFE Act requirements. As of year-end 2009, NMLS approved 152 organizations as approved course providers. NMLS also approved 248 courses which enabled mortgage loan originators across the country access to a wide variety of course titles and delivery formats. By year-end 2009, approved education providers delivered 420,000 hours of pre-licensure education to state-licensed mortgage loan originators. Figure 18 reflects the rapid growth of education being delivered to the industry.

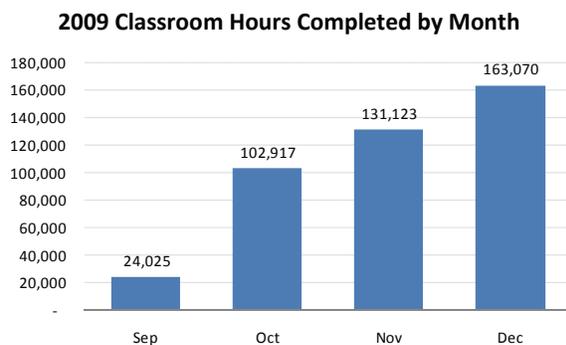


Figure 18. 2009 Classroom Hours Completed by Month

Despite these significant achievements, NMLS continues to work with its course providers to increase the number of courses available as well as solicit new organizations to become approved course providers. Also, NMLS has initiated an auditing function to ensure that approved course providers are complying with the standards of conduct and delivering the type of quality education the industry expects and the public deserves.

Certification of Testing and Education

Acting with the approval of the SRR Board of Managers and with the guidance of the Mortgage Testing and Education Board (MTEB), SRR staff developed a set of policies, procedures and NMLS system functionality by which currently licensed mortgage loan originators could participate in a process where their previously completed state-required education

and state test results may be used to satisfy SAFE Act testing and education requirements. 35 state agencies are scheduled to participate in this certification process which will be implemented in 2010.

Mortgage Testing and Education Board

In September 2009, the SRR Board of Managers created the Mortgage Testing and Education Board (MTEB). The MTEB, which is a successor to the Testing and Education Subgroup of the Implementation Working Group, has both oversight and advisory roles. The MTEB is comprised of nine state regulators representing each of the CSBS Districts and at least one AARMR representative.

The MTEB has administrative responsibility regarding the Rules of Conduct which apply to test candidates and the Standards of Conduct which apply to approved course providers and applicants. The MTEB has the authority to investigate complaints of violations of the Rules and Standards of Conduct and can discipline course providers including denying applications or withdrawing approvals. In cases involving test candidates, it may find that an applicant or licensee violated the Rules of Conduct and notify the appropriate state agencies of its findings.

The MTEB also serves in an advisory role by providing guidance and recommendations to the SRR Board of Managers and staff on policies about a range of issues affecting the implementation and operations of SAFE Act testing and education requirements.

A committee roster of the MTEB can be found in Appendix C.

Cooperative State Regulation and Supervision

Overview

By early 2009, all 50 states plus the District of Columbia and Puerto Rico signed the Nationwide Cooperative Protocol and Agreement for Mortgage Supervision (Protocol and Agreement). The Protocol and Agreement are companion documents outlining a basic framework for the coordination and supervision of multi-state mortgage entities (those non-depository institutions operating in two or more states). The initiative established the Multistate Mortgage Committee (MMC) comprised of ten state regulatory officials appointed by CSBS and AARMR to coordinate and direct the examination and enforcement efforts for all states that signed the Agreement¹⁰.

The MMC is responsible for the selection of examination targets and coordination of multistate examinations. In addition, the MMC is responsible for the development of uniform examination processes and the modernization of traditional examination approaches to achieve more effective supervision. The processes are being designed initially to pull data from NMLS and ultimately to coordinate seamlessly with the licensing processes. 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 on-site examinations and off-site monitoring.

In 2009, the MMC began its first multi-state examinations. In conjunction with this schedule, the state of Pennsylvania undertook a pilot program on behalf of the MMC to conduct electronic reviews of 250 mortgage lenders using the software discussed above. This program will be phased in throughout 2010, with full lender integration and upload capability expected by 2011.

Throughout the year, the states conducted examinations of reverse mortgage institutions using the CSBS/AARMR Reverse Mortgage Examination Guidelines published in late 2008. In addition, state collaboration on investigations and enforcement actions continued to be a key component of the cooperative effort.

Companies Operating in One or More States in NMLS

Number of States in Which a License is Held	Companies	%
1	8,032	49%
2	568	7%
3-5	412	9%
6-10	191	9%
11-20	155	14%
21+	79	12%
*Total Companies: 9,437		
Total Company Licenses: 16,372		

*Total Companies excludes companies with only submitted applications.

Figure 19. Companies Operating in One or More States in NMLS

¹⁰ <http://www.csbs.org/Content/NavigationMenu/Home/2009MMCREPORTTOSTATEREGULATORSFinal.pdf>

NMLS Processing Fees

NMLS Fees

To fund NMLS operations, functionality and enhancements as well as to achieve the objectives of the SAFE Act, NMLS charges various fees for services provided. Section 1510 of the SAFE Act authorizes NMLS to “charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry.” NMLS fees are paid for, in the majority of cases, by the licensed entity or, in some instances, by the state.

A summary of NMLS fees by type includes:

- (1) NMLS processing fees for company, branch and mortgage loan originator licenses managed in the System.
- (2) Test fees for the national and state test components.
- (3) Education fees related to the:
 - a. Banking of course hours taken by licensed mortgage loan originators.
 - b. Approval and renewal of course providers and pre-licensure and continuing education courses.
- (4) Criminal background check fees for the collection of fingerprints and distribution of FBI’s criminal history record information to authorized recipients¹¹.

NMLS fees collected in 2009 by type are provided in Figure 20. Other NMLS services, such as the NMLS Call Center, system access, updating a licensee’s re-

cord, system reports and *NMLS Consumer Access* are provided at no charge to the user.

The SRR Board of Managers reviews, at least annually, the NMLS fees by type to determine the appropriateness of each fee. SRR solicits public comment on any fees that the SRR Board of Managers has under consideration for change.

NMLS Processing Fees

Users of NMLS pay various processing fees as listed below. These processing fees are unchanged from 2008 levels. Processing fees by type are provided in Figure 21.

- (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. The Annual Processing Fee is a “per state/per license” fee.
- (3) *Mortgage Loan Originator Transfer Fee.* This \$30 fee is charged each time the NMLS

2009 NMLS Fees Collected



Figure 20. 2009 NMLS Fees Collected

2009 NMLS Processing Fees by Type

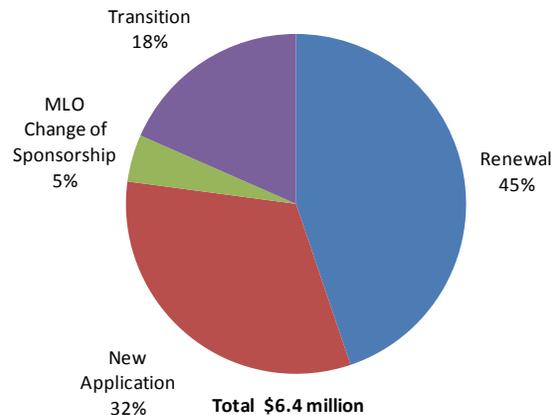


Figure 21. 2009 NMLS Processing Fees by Type

¹¹ Criminal background check functionality was made available in NMLS in January 2010. Consequently, no revenue was collected in 2009.

NMLS Processing Fees

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. The Mortgage Loan Originator Transfer Fee is a “per state/per license” fee.

NMLS Test Fees

Under the SAFE Act each mortgage loan originator is required to pass a test which consists of two components: a national component and a unique state test component. These fees are payable by an individual who is enrolling to take the mortgage loan originator SAFE Act test components or by the company which may be enrolling its mortgage loan originator(s) for the test components. Test fees by component are as follows:

- (1) National component - \$92 (contains 100 questions with an appointment time of three hours).
- (2) Each unique state component - \$69 (contains 55-65 questions with an appointment time of two hours).

NMLS Education Fees

Under the SAFE Act, each mortgage loan originator is required to take a minimum of 20 hours of pre-licensure education and eight hours annually of continuing education through courses and course provid-

ers that are approved by NMLS. Fees associated with approval and renewal of courses and course providers are provided in Figure 22.

NMLS also charges each NMLS-approved course provider a “credit banking fee” of \$1.50 per course hour taken by a mortgage loan originator. “Credit banking” is the process where the course provider records a candidate’s or licensee’s SAFE Act required education hours into NMLS. Fees paid by a mortgage loan originator to take an NMLS-approved course are set by the NMLS-approved course provider.

NMLS Criminal Background Check Fees

NMLS provides functionality within the system to process fingerprints for the purpose of obtaining a federal criminal background check (CBC) through the Federal Bureau of Investigation (FBI). The criminal history record information check response from the FBI will be attached to the mortgage loan originator’s NMLS record and viewable by state regulators who have issued the mortgage loan originator a license. Fees associated with a criminal background check are as follows:

- (1) Live Scan (electronic): \$39 CBC Processing Fee.
- (2) Paper Card Capture (if Live Scan is not selected): \$49.

More information about NMLS processing fees can be found on the *NMLS Resource Center*.

NMLS Education Fees

Education Services Process/Transaction Type and Who Pays the Fee	Fees – 2009
Course Provider Application Fee – Initial Course Provider pays	\$400 for each initial application, good for 2 years.
Course Provider Application Fee – Renewal Course Provider pays	\$400 for each initial application, good for 2 years.
Course Application Fee – Initial Course Provider Pays	\$300 for each initial application, good for 1 year.

Figure 22. NMLS Education Fees

Overview

Highlights of SRR's audited financial statements as of year-end 2009 and 2008 are shown in Figure 23. SRR's \$15.9 million in 2009 total assets increased by \$5.5 million or 53 percent from 2008 as it continued to invest in the expansion and enhancement of NMLS and the development of SAFE Act national and state test components. Borrowings increased \$3.1 million or 53 percent to fund NMLS development.

Total SRR 2009 revenues of \$16.3 million were derived from: \$6.4 million in NMLS processing fees; \$5.9 million in state development and operating support; \$3.1 million in test administration fees; and \$0.8 million in education registration fees. NMLS operating expenses totaled \$15.7 million, resulting in a \$668,000 net gain for the year. In 2008, state regulatory agencies provided \$6.6 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 \$13.7 million. In 2009, NMLS collected and disbursed more than \$33 million on behalf of the states participating in NMLS, up from \$24 million in 2008.

State Regulatory Registry LLC 2009 and 2008 Financial Highlights (audited) (Dollars in Thousands)		
	<u>2009</u>	<u>2008</u>
Total assets	\$15,940	\$10,410
Mortgage licensing system, net	12,137	8,312
Test development costs, net	1,123	0
Lines of credit	8,774	5,705
Retained earnings	2,878	2,210
Revenues	16,327	9,605
Expenses	15,659	10,252
Net income (12 months)	668	(647)

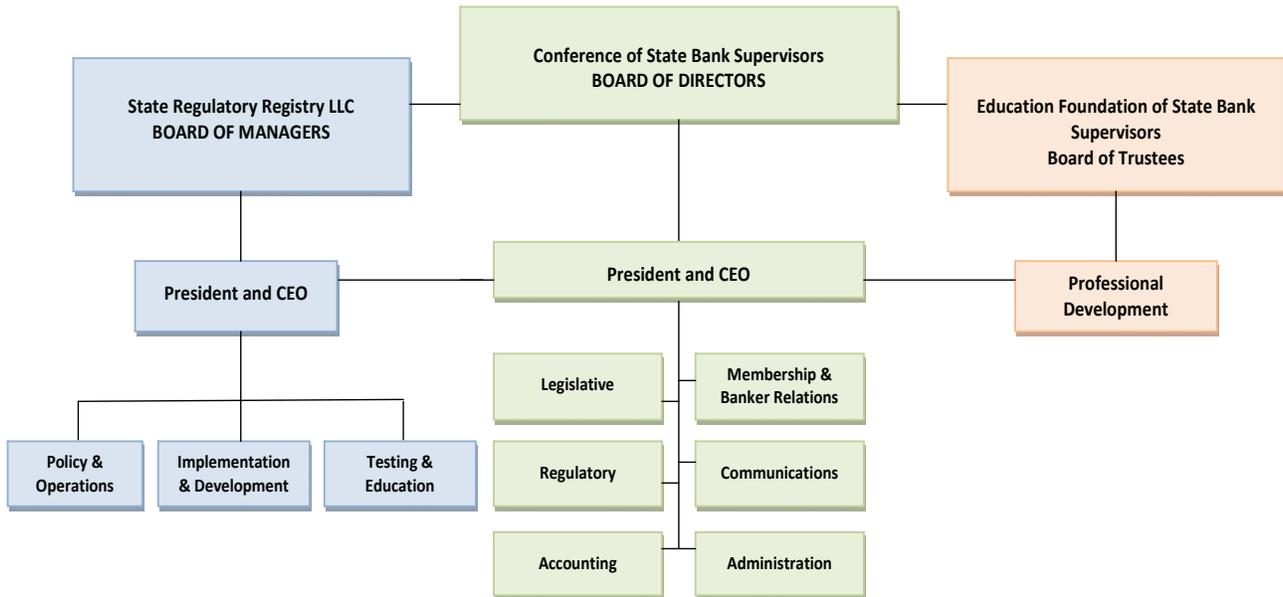
Figure 23. SRR LLC 2009 and 2008 Financial Highlights (audited)

Tables and Figures

Figure 1.	NMLS - SRR Organization Chart	2
Figure 2.	Company and Individual Licenses Managed in NMLS	3
Figure 3.	2009 NMLS Transactions by Type	3
Figure 4.	Annual Renewals Processed in NMLS	3
Figure 5.	Transition: Company & Individual Licenses	3
Figure 6.	Unique Company & Individual Entities Managed in NMLS	4
Figure 7.	Individual Licenses Managed in NMLS	4
Figure 8.	States/Territories Participating on NMLS	4
Figure 9.	2009 NMLS Call Center Volume (Calls per month)	5
Figure 10.	2008 & 2009 NMLS Call Center Volume and Statistics	5
Figure 11.	2009 NMLS Users Conference Panel	5
Figure 12.	NMLS Consumer Access Home Page	7
Figure 13.	State SAFE Legislative Activity	8
Figure 14.	State SAFE Enabling Legislation Timeline	9
Figure 15.	SAFE Act Mandates for NMLS	10
Figure 16.	State Test Components Released in 2009	11
Figure 17.	2009 National and State Test Components	12
Figure 18.	2009 Classroom Hours Completed by Month	13
Figure 19.	Companies Operating in One or More States in NMLS	14
Figure 20.	2009 NMLS Fees Collected	15
Figure 21.	2009 NMLS Processing Fees by Type	15
Figure 22.	NMLS Education Fees	16
Figure 23.	SRR 2009 and 2008 Financial Highlights (audited)	17

Appendix A. CSBS Organization Chart

Conference of State Bank Supervisors Organization Chart



Conference of State Bank Supervisors: www.csbs.org

The Conference of State Bank Supervisors (CSBS) is the nationwide organization for state bank regulation, representing the bank regulators of the 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. State authorities supervise approximately 6,000 state-chartered financial institutions. Further, the majority of state banking departments also oversees mortgage providers and other financial service providers. CSBS is also responsible for improving the quality of state bank supervision by providing performance evaluation and accreditation programs for the banking departments, as well as supervisory education and training programs for state personnel.

Education Foundation of State Bank Supervisors: www.csbs.org

The Education Foundation of State Bank Supervisors (EFSBS) is the professional development division of CSBS. EFSBS offers a wide range of programs from basic examiner training, continuing education, and executive programs for senior department personnel.

State Regulatory Registry LLC: www.stateregulatoryregistry.org

The Nationwide Mortgage Licensing System (NMLS) is owned and operated by State Regulatory Registry LLC (SRR). The Conference of State Bank Supervisors (CSBS) in cooperation with the American Association of Residential Mortgage Regulators (AARMR) established the SRR on September 21, 2006. A limited-liability company, SRR is to develop and operate nationwide systems for state regulators in the financial services industry. Such systems are intended to enhance states ability 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.

Appendix B. NMLS Development Schedule

System Development Schedule

Release Roadmap and Features	
Date:	Primary Features:
03/06/2009 (2009.1 Release)	<ul style="list-style-type: none"> • Financial Statements Functionality • Open Regulator Access • View Confidential Information Role • Mortgage Loan Originator Roster Report for Regulators • System Efficiency Enhancements
06/22/2009 (2009.2 Release)	<ul style="list-style-type: none"> • SAFE:MLO National and State Testing • SAFE: Pre-licensure and Continuing Education • Form Filing Updates and Enhancements
09/14/2009 (2009.4 Release)	<ul style="list-style-type: none"> • Streamlined Renewal Enhancements • Addition of Original License Date field • Additional system notification: Branch Administrative Action • MU Form Changes • SAFE: Pre-Licensure and Continuing Education enhancements Requirements • Instructional text and workflow message update
01/25/2010 (2010.1 Release)	<ul style="list-style-type: none"> • Fingerprinting • Phase I: Consumer Access • MU Form Changes
Planned Future Enhancements	
	Features:
	<ul style="list-style-type: none"> • Additional Reports • State Test/Pre-Education Certification • Federal Registration • Credit Reports • Call Reports • Disciplinary/Enforcement Actions • Disclosure Explanations/Details Reporting • Consumer Complaints Routing • B2B Consumer Access • Surety Bonds

Appendix C. Committee Rosters

Mortgage Policy Licensing Committee 2009 Members

Chair	
<p>Ms. Deborah Bortner Director of the Division of Consumer Services Washington Department of Financial Institutions</p>	
Members	
<p>Mr. Alan J. Cicchetti Deputy Commissioner Connecticut Department of Banking</p>	<p>Mr. David J. Cotney Chief Operating Officer Massachusetts Division of Banks</p>
<p>Ms. Jean Boven Deputy Commissioner Regulatory Compliance Division Michigan Office of Financial and Insurance Regulation</p>	<p>Mr. Jeff Bush Chief Deputy Commissioner Securities Division Indiana Secretary of State</p>
<p>Mr. Rod Carnes Deputy Commissioner Non-Depository Financial Institutions Division Georgia Department of Banking & Finance</p>	<p>Mr. Mike Igney Assistant Commissioner Compliance Division Tennessee Department of Financial Institutions</p>
<p>Mr. Mike Cameron Attorney Nebraska Department of Banking and Finance</p>	<p>Ms. Marlene Aitchison Projects Coordinator Wyoming Division of Banking</p>
<p>Mr. Richard Fergus Division Manager Arizona Department of Financial Institutions</p>	<p>Ms. Louisa A. Broudy Deputy Commissioner California Department of Corporations</p>
SRR Staff	
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Appendix C. Committee Rosters

Mortgage Advisory Council 2009 Members

Members	
AllyMac Mortgage Services Mr. Neil Sweren Owings Mills, MD	American Brokerage Mr. Adam L. Stein President Auburn, WA
American Financial Services Association Ms. Danielle Fagre Arlowe Sr. VP, State Government Affairs Washington, DC	AMS Mortgage Ms. Vickie Graves President Madison, MS
Associated Mortgage Group, Inc. Mr. Thomas R. Hendrickson Portland, OR	Citigroup, Inc. Ms. Briget Polichene VP & Senior Counsel Indianapolis, IN
Community Mortgage Banking Project c/o Mortgage Banking Initiatives Inc. Mr. Pete Mills Alexandria, VA	CTX Mortgage Ms. Debra R. Dunn Executive VP, Industry Relations Montrose, CO
GMAC Mortgage Group, LLC Mr. William H. Finlay Associate Counsel Horsham, PA	HSBC – North America Mr. Larry Heckner Sr. VP, Government Relations Wilmington, NC
Massachusetts Mortgage Association Ms. Denise M. Leonard Executive Director Medford, MA	Mortgage Bankers Association Mr. Christopher Oswald Director, State Government Affairs Washington, DC
Mortgage Bankers Association Mr. Ken Markison Washington, DC	Mortgage Bankers Association of Georgia Mr. Tyler Wood President Macon, GA
New England Mortgage Education Council a dba of MA MBA Mr. Kevin M. Cuff Executive Director Boston, MA	SMC Home Finance Mr. Donald E. Fader Executive Vice President Kinston, NC
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Appendix C. Committee Rosters

Mortgage Testing & Education Board 2009 Members

Chairman	Vice Chairman
Mr. Ambrose Wilson, IV Deputy Commissioner Kentucky Department of Financial Institutions	Mr. Craig D. Christensen, CME Senior Examiner, Finance Bureau Iowa Division of Banking
Members	
Mr. Darin Domingue Deputy Chief Examiner Residential Mortgage Lending Section Louisiana Office of Financial Institutions	Mr. Jeremy Windham Loan Examinations Coordinator Alabama State Banking Department
Mr. Kris Booker, CME Examiner III Mississippi Department of Banking & Consumer Finance	Ms. Lucinda Marie Fazio Financial Legal Examiner Washington Department of Financial Institutions
Ms. Pamela Kay Baker Manager Consumer Finance Lending Unit Michigan Office of Financial Insurance Regulation	Mr. Philip J. Neary Regional Manager Division of Consumer and Mortgage Lending Kansas Office of the State Bank Commissioner
Mr. Timothy M. Siwy Director Bureau of Compliance, Investigation and Licensing Pennsylvania Department of Banking	
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