

Licensing Position Statement

Interpreting HUD's Final Ruling

Compliance Initiative 2011



Interpreting HUD's Final Ruling – SAFE Act



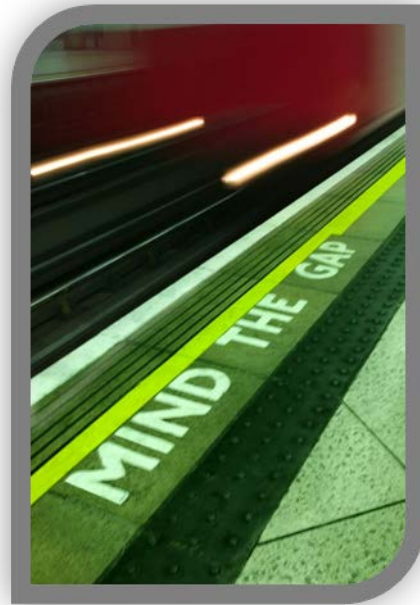
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Executive Summary

As your business partner and leader in the industry, Indecomm Global Services is always looking at the ever-changing lending landscape for opportunities to best support you as our client. As you are no doubt aware of, the Housing and Economic Recovery Act introduced the mortgage industry to the Secure and Fair Enforcement Act or the SAFE Act.

The following is an overview of the primary objectives of the SAFE Act, the protections it provides, and the best approach to support our business partnership while remaining compliant with the SAFE Act.



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SAFE Act - Review

The SAFE Act was signed into law in July of 2008 as part of the Housing and Economic Recovery Act with a primary goal of consumer protection and reducing mortgage fraud. Unfortunately, due to the minutia of each state's interpretation of the SAFE Act requirements the message of consumer protection can be lost. As a reminder, the *primary objective* of the Act is to provide consumers with a clear method of validating the company they trust to originate and fund their mortgage loans.



So how does the SAFE Act provide consumer protection? It occurs in a variety of ways. First and foremost there are specific requirements that a mortgage loan broker, lender or servicer must meet. There are security measures in place through credit and background checks. In addition, the Act requires licensees to participate in pre-licensure and continuing education courses along with professional expertise in the industry, record retention requirements, with each state managing their unique licensing requirements. Still, these are examples of the steps an industry professional must take in order to obtain a license. The consumer advocacy piece comes into play via the requirement for all licensees to register with the Nationwide Mortgage Licensing System and Registry (NMLS).

What does the Final Ruling from HUD mean? On June 29, 2011 HUD issued the Final Ruling on the SAFE Act (See "Attachments" for a full copy). The Final Ruling clarified key components of the Act including the licensing requirements for Independent Contractors, Loan Processors, and Underwriters, supervisory components, and key terms and definitions found within the Act. The document includes summary commentary in response to industry feedback and identified distinctions on the authority of HUD and the Consumer Finance Protection Bureau (CFPB). For the purposes of this position statement, we will focus primarily on the sections dealing with the role of loan processors, underwriters, and independent contractors found in Section M (pg. 83-88) and Appendix C (pg. 147-149).

Indecomm's Interpretation of HUD's Final Ruling

On Wednesday, June 29, 2011 HUD released the Final Ruling on "The SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities" in an attempt to clarify some key provisions that pertain to the scope of licensing requirements as well as requirements pertaining to implementation, oversight, and state enforcement responsibilities.

Does the SAFE Act require Loan Processors and/or Underwriters to be licensed? Technically, the answer is "No." According to the Final Ruling (pg. 86) HUD states that *"loan processors and underwriters are clearly not covered by licensing under SAFE Act when such individuals perform clerical or support duties at the direction of and subject to the supervision and instruction of either a state-licensed loan originator or a registered loan originator."* The Final Ruling also states that with respect to states that require processing or underwriting companies to be licensed, the SAFE Act deals only with the licensing of individuals and in the case of processors or underwriters, the Act requires supervision by an individual who holds a SAFE Act-compliant loan originator license.

What is meant by "direction of and subject to the supervision" of a state-licensed loan originator? The Final Ruling provided some clarification on the subject of supervision. HUD reiterated (see pg. 86-87) that nothing in the Act or the Final Ruling requires that the licensed individual be the processor or underwriter's direct or immediate supervisor BUT further clarified that there must be an actual nexus between the licensed originator's direction or supervision and the processor or underwriter's performance. Essentially the licensed individual acting in a supervisory capacity must play an active role in the direction, training, and oversight of the processor or underwriter's position. The Act requires more than simply demonstrating a nominal relationship in the form of an organizational chart.

Does the SAFE Act permit the supervision of multiple processors or underwriters by a single licensed individual? Yes, according to the Final Ruling a single licensed originator may be able to effectively direct, supervise, and instruct multiple processors or underwriters, possibly even those in overseas locations. The Final Ruling provides specific language to this effect on pg. 87 stating *"A single licensed or registered loan originator may be able to effectively direct, supervise and instruct multiple loan processors or underwriters, possibly even those in overseas locations, depending upon all of the facts and circumstances."* Not only is Indecomm registered with the NMLS, but our teams are supervised by licensed MLOs as called for in the Final Ruling.

Does the SAFE Act require independent contractors to be licensed individually? The Final Ruling provides several examples of independent contractor processing and underwriting activities that require a State Mortgage Loan Originator License (see pg. 147-148). The key distinction between a state requiring individual licensure and not being required to enforce licensure comes down to Section (b)(3) found on pg. 148 which stipulates that *"A state is **not** required to impose SAFE Act licensing requirements on any individual loan processor or underwriter who is an employee of a loan processing or underwriting company that provides*

loan processing or underwriting services to one or more mortgage lenders or mortgage brokerage firms under a contract between the loan processing or underwriting company and the mortgage lenders or mortgage brokerage firms, provided the employee performs only clerical or support duties and performs those duties only at the direction of and subject to the supervision and instruction of a licensed loan originator employee of the same loan processing or underwriting company.” The key difference is the processor or underwriter's employment status.

What does that mean to our clients? Indecomm is registered with the NMLS and our associates are supervised by a licensed MLO. In addition, our associates do not engage in direct communication with the borrower or consumer, further supporting the exclusion for individual licensure (see pg. 147-149). The Final Ruling issued by HUD supports Indecomm's previous contention that our business structure and contractual partnerships with our clientele requires supervisory oversight of associates by a licensed mortgage loan originator but does NOT require individual licensure of associates due to the fact that we as an organization have contractual relationships with our clients and our associates are full-time, W-2 employees.

Attachments:

[HUD Final Ruling](#)

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