

Mortgage Law Update

The SAFE Act, The South Carolina Mortgage Lending Act and Dodd-Frank

Charles M. Knight
Staff Attorney
S.C. Dept. of Consumer Affairs

The Secure And Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) Topics of Discussion

Nationwide Mortgage Licensing System and Registry
(NMLS&R)
SAFE legislation (Title V)

NMLS Description

- Nationwide state licensing system
- Similar to other industries
 - Securities
 - Investment advisors
- Custom for mortgage industry
- Registry for registered loan originators

NMLS Description

- Two primary goals:
 - Provide uniform mortgage application for every agency
 - Develop comprehensive licensing and supervisory repository

NMLS Objectives

- Streamline the licensing process
 - Efficiency
 - Standardization
 - Centralize redundant processes
- Enhance supervision
- Increase consumer protection
 - Industry accountability
 - Reduced fraud
 - Access to license and sanction data

Who is Involved – Overview

- Conference of State Bank Supervisors (CSBS)
- American Association of Residential Mortgage Regulators (AARMR)
- State Regulatory Registry LLC (CSBS subsidiary)
- Financial Industry Regulatory Authority (FINRA)(formerly NASD)
- State regulatory taskforce & working groups
- Industry advisory groups
- Federal banking agencies
- Consumer Financial Protection Bureau (replaces HUD)

4 Uniform Mortgage Applications

- Company (mortgage lenders/servicers and brokers)
- Branch
- Control person
- Individuals (loan originators)
- States retain ability to maintain specific requirements
- Federal registrants use abbreviated company and individual forms

System Functionality

- Apply for licensure (includes CBC, credit report, education and testing)
- Maintain a license (amend, update or renew)
- Process applications & amendment requests
- Collect & disburse fees
- Regulator work queues
- Submit reports

System Use

- Licensees to enter data into system
 - Attest to accuracy and completeness
 - One system record
 - Updating jurisdiction for subsequent states
- States to validate licensee information

NMLS Participation

- NMLS launched on 1/2/2008 with 7 states
- 50 state agencies, DC, PR and VI on today
- Licenses managed in NMLS today:
 - 32,939 companies
 - 28,818 branches
 - 221,115 loan originators

H.R. 3221

- Housing & Economic Recovery Act of 2008
 - Signed by President Bush on July 30, 2008
 - Reforms GSE (Freddie and Fannie) regulation
 - Licensure and registration of all loan originators (Title V)
 - Modernizes the Federal Housing Administration
 - Promotes private-sector loan workouts to prevent foreclosure

SAFE Mortgage Industry Mandates

- All mortgage loan originators must be either
 - Licensed
 - Registered
- All licensed/registered loan originators must participate in the Nationwide Mortgage Licensing System & Registry

Licensed or Registered?

- Registered – Loan originators employed by:
 - A federally insured depository institution (bank, S&L or credit union)
 - A subsidiary owned and controlled by a federally supervised depository and regulated by a federal banking agency
- Licensed – All other mortgage loan originators must be state licensed (employed by brokers or lenders)

SAFE State Agency Mandates

- All states must have a system of licensing in place for residential mortgage loan originators by July 31, 2009
- System must meet meets SAFE definitions and minimum standards, that include:
 - All states must license mortgage loan originators through NMLS&R.

SAFE Federal Banking Agency Mandates

- Must develop/maintain a system for registering loan originators in NMLS&R
- Registration requires
 - Criminal background check
 - Personal history and experience
- Shall coordinate with NMLS&R in assigning unique ID #

SAFE Department of Housing and Urban Development Mandates (transferred to the Consumer Financial Protection Bureau)

- HUD must determine that:
 - State mortgage loan originator licensing standards meet SAFE mandated minimums
 - State is participating in NMLS&R
 - NMLS&R meets SAFE mandates
- HUD must implement a system for non-compliant states
- HUD loan originators licensed in NMLS&R

SAFE CSBS/AARMR Mandates

- CSBS and AARMR must develop and maintain the Nationwide Mortgage Licensing System and Registry

SAFE NMLS&R Mandates

- Establish protocols for issuing unique ID #
- Process criminal checks for all loan originators (FBI check only)(licensed and registered)
- Process credit report requests for all licensed loan originators (single bureau only)
- Approve pre-licensure education and CE courses and all tests

SAFE NMLS&R Mandates

- Develop national and state tests for loan originators
- Develop mortgage call report
- Provide public access to licensing data (www.nmlsconsumeraccess.org)
- Process consumer complaints
- Maintain record of disciplinary actions against licensees

SAFE State-licensed Mortgage Loan Originator Mandates

- Provide fingerprints for criminal background check (FBI only)
- Provide authorization for NMLS&R to obtain a credit report
- Input/maintain their personal Mortgage Loan Originator record in NMLS&R
- Pass national and state mortgage tests

SAFE State-licensed Mortgage Loan Originator Mandates

- Take 20 hours of pre-licensure education courses approved by NMLS&R.
- Take 8 hours of continuing education annually
- CE must include:
 - 3 hours of federal law and regulations
 - 3 hours of ethics, which must include fraud, consumer protection, and fair lending
 - 2 hours of standards on non-traditional mortgage lending

SAFE Mortgage Loan Originator License Standards for licensure

- Never had a loan originator license revoked
- No felonies in the past 7 years
- Never had a felony involving
 - Fraud
 - Dishonesty
 - Breach of trust
 - Money laundering

SAFE Mortgage Loan Originator License Standards

- Demonstrate financial responsibility and general fitness
- Score 75%+ on national and state NMLS&R test
- Take 8 hours of CE annually
- Maintain licensure through NMLS&R

The South Carolina Mortgage Lending Act (S-673)

Mortgage Lending Act S-673

- Passed in 2009
- Effective January 1, 2010
- Changed Title 40, Chapter 58 (Mortgage Broker Licensing) and added Title 37 Chapter 22 (Mortgage Lender Licensing) (Two state agencies enforce)
- Implements the Federal SAFE Act in South Carolina, however, our definitions are broader

Mortgage Lending Act S-673

- Requires licensing of all mortgage loan originators and the companies that employ them and each branch where business is conducted unless exempt.
- Mortgage servicers must license loss mitigation personnel as loan originators
- Mortgage Lenders, mortgage brokers and mortgage servicers must be licensed
- Company must be covered by a surety bond based on loan volume and includes minimum bond coverage
- Mortgage loans now include manufactured housing
- All licensees must use NMLS&R

Mortgage Lending Act S-673

- Unlicensed persons may not conduct business or advertise mortgage loans in SC
- All advertising and mortgage loan documents must include a licensee's NMLS ID #
- Licensed companies must file a report of each loan application taken in this state
- Prohibited activities broadened and penalties for violations increased
- Broadens the authority of the state to ensure the law is followed, including the ability to require a refund to consumers.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)

Dodd-Frank

- Two Main Categories of Changes
 1. Creates the Consumer Financial Protection Bureau (CFPB)
 2. Specific Changes to various consumer protection laws

The CFPB – Effective Dates

- Dodd-Frank became effective July 22, 2010
- Authority transfers to the CFPB on July 21, 2011
- Rules made by the CFPB under Dodd-Frank will take effect sometime between July 2012 and July 2013
 - Depending on when the rules are issued
- Some changes don't require any rules to be made
 - It's unclear whether these changes took effect on July 22, 2010, or if there will be some delay

The CFPB

- Structure

- Part of the Federal Reserve Board (FRB)
- Agency Head will be appointed by the President
- Funded through the FRB, but the FRB has no control over the amount or allocation of the budget

- Rulemaking Authority

- CFPB takes over rulemaking for all the major consumer protection statutes and some new rulemaking authority is granted
- These cover disclosures in consumer loans, credit reporting, credit discrimination, and unfair, deceptive, or abusive practices, among others.
 - CFPB will have new rulemaking authority regarding debt collection

The CFPB

- Rulemaking Authority (cont.)
 - The CFPB's authority covers almost every business in the financial services area
 - E.g, mortgage lenders, banks, credit unions, debt collectors, student lenders, payday lenders, auto finance companies, etc.
 - One major exception:
 - Most dealers of cars, boats, motorcycles, and RVs are exempt
 - These businesses will either stay under the FTC's authority, or the FTC will be granted new authority covering them (e.g. as with auto financing)
 - The FTC will gain enhanced authority to write rules governing unfair, deceptive, or abusive practices by these businesses under Dodd-Frank

The CFPB

- Rulemaking Authority (cont.)
 - No authority over insurers (including credit insurers)
 - But, CFPB will have authority over lenders who sell credit insurance.
 - CFPB will have rulemaking authority regarding unfair, deceptive, or abusive practices by attorneys who offer credit counseling, debt settlement, loan modification, etc.
 - Except when the conduct occurs within an attorney-client relationship
 - CFPB has authority to ban forced arbitration
 - No authority to set a usury cap
 - But it can make tougher rules for high-cost loans
 - The CFPB will have rulemaking authority over non-profits
 - Currently the FTC does not have this authority

The CFPB

- Consumers will not be able to bring lawsuits for violations of the CFPB's rules regarding unfair, deceptive, or abusive practices.
 - But, CFPB will have rulemaking authority under some statutes that do allow consumer lawsuits.
 - Some state laws effectively give consumers the right to bring lawsuits for violations of federal laws

The CFPB

- Enforcement
 - The CFPB has authority to bring actions against banks and credit unions with assets of \$10 billion or more for violations of its rules.
 - Existing banking regulators have enforcement authority over smaller institutions
 - The CFPB also has enforcement authority over certain other businesses
 - The mortgage industry generally, private student lenders, payday lenders, other large participants in the market for consumer financial products, and some others.

TILA Changes

- General changes to the Truth in Lending Act (TILA)
 - Leases and some loans over \$25,000 are currently exempt from TILA
 - This cap is raised to \$50,000 under Dodd-Frank
 - Damages available for TILA violations are increased

TILA Changes – Mortgages

- Clarifies that TILA applies to mortgage originators
 - Still unclear whether TILA applies to servicers
- Bans Yield Spread Premiums (YSPs) as a form of loan originator compensation if based on the loans terms other than principal
- Bans forced arbitration for mortgages
- Bans single-premium credit insurance in mortgages
- Bans prepayment penalties for some more expensive loans
- Requires the lender to determine and document that the borrower can afford the loan

TILA Changes – Mortgages

- Expands the coverage of the Home Ownership and Equity Protection Act (HOEPA)
 - HOEPA places some limits on high-cost loans
- Imposes new restrictions on appraisals and standards for appraiser independence
- New requirements on mortgage servicers to promptly credit payments and provide statements to borrowers

RESPA Changes

- Dodd-Frank makes some changes to the Real Estate Settlement Procedures Act (RESPA) regarding mortgage servicing
 - Increased damages for violations
 - Requires faster responses to certain borrower inquiries regarding servicing
 - Places some restrictions on force-placing of insurance
 - Requires prompt refund of escrow balance when a loan is paid off
 - A new “single integrated disclosure” will be developed
 - To include the information currently disclosed under other laws

Foreclosure Prevention

- Makes HAMP more transparent
 - New web portal for consumers to find out if they're eligible for HAMP
 - Requires servicers to disclose NPV inputs and outputs at the time of denial
 - Requires disclosure of the NPV model itself
- New “bridge loan” program for unemployed homeowners
- Funding for legal services programs to defend foreclosures and evictions

Federal Preemption

- Preemption: the principle that a federal law can supersede or supplant an inconsistent state law or regulation
 - Comes from the U.S. Constitution's Supremacy Clause
 - Federal Preemption of state consumer protection and predatory lending laws has been hotly debated
- Agency Regulations, federal statutes, and court decisions have used federal preemption to limit the effect of some state laws.
 - For example, Watters v. Wachovia upheld an OCC regulation that prevented states from enforcing some laws against subsidiaries of national banks because they were regulated by the OCC

Federal Preemption (cont.)

- Dodd-Frank reigns in Federal Preemption allowing states to become more involved in regulation of certain financial institutions.
 - By, among other things:
 - Reversing Waters
 - Sharply limiting the AMTPA's preemption of state laws governing mortgages
 - Clarifying that states can enforce non-preempted state laws against national banks and federal thrifts
- These changes are effective July 21, 2010, but contracts entered into before that date are still covered by federal preemption.
- CFPB Rules will generally not preempt state law

Misc

- Credit Reporting
 - Dodd-Frank requires creditors to provide consumers with a copy of their credit score if they deny a credit application or offer less favorable terms because of a credit report
- Funds Availability Rules
 - Increases the amount of a deposited check that is available the first day and next business day from \$100 to \$200
- Lower fees that merchants pay to credit card networks

Current Regulation and Proposed Legislation

H3104 Mortgage Satisfaction

HUD issues final rules, but does not address loss mitigation

Department has filed proposed regulations to implement
S673

S702 proposed legislation for mortgage servicers

Resource Guide

Links to Helpful Info

- Licensing and registration information for licensees
<http://mortgage.nationwidelicensingsystem.org>
- Consumer Access to identify licensees
<http://www.nmlsconsumeraccess.org/>
- HUD's website for SAFE implementation
<http://hud.gov/offices/hsg/rmra/safe/sfea.cfm>
- Department of Consumer Affairs
<http://www.scconsumer.gov/> Phone (803) 734-4200 or (800) 922-1594 (toll free in S.C.)
- SC Board of Financial Institutions, Consumer Finance Division 803-734-2020

Questions?

Charles M. Knight
Staff Attorney
S.C. Dept. of Consumer Affairs
(803) 734-4187
Cknight@scconsumer.gov