



PHN: (919) 872-2740 | FAX: (919) 872-4826 | EMAIL: info@nc-mha.org

March 4, 2010

Regulations Division
Office of the General Counsel
Dept. of Housing and Urban Development
451 Seventh Street, S.W. Room 10276
Washington, D.C. 20410-0500

Re: Docket No. FR-5271-P-01
Proposed HUD Rules to Implement the SAFE Mortgage Licensing Act

(VIA Email-Hard Copy to Follow)

Dear General Counsel:

The North Carolina Manufactured and Modular Homebuilders Association (NCMHA), a trade association representing all segments of the factory-built housing industry in North Carolina, including manufacturers, retailers, lenders, and community owners, appreciates the opportunity to comment on HUD's Proposed Rules to Implement the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) (12 U.S.C. §§ 5101-5113).

The factory-built housing industry in North Carolina has been uniquely impacted by the SAFE Act in ways we believe that Congress never intended. While the Act is aimed primarily at providing a uniform scheme for licensing and regulating the mortgage industry, the Act is being incorrectly interpreted and applied to our industry, particularly to retail sellers of manufactured and modular housing, and to personal-property only finance transactions. When reviewing our comments, and in finalizing your proposed Rules, we encourage HUD to keep in mind two of the stated purposes of the SAFE Act: (1) increase uniformity; and (2) reduce regulatory burden.

NCMHA Comments on HUD Proposed Rules

Section 3400.103(c)(1) – Clarify what it means to “Take an Application”

1. Amend the Rule

When the SAFE Act and its preamble are read together, we believe the phrase “takes a residential mortgage loan application” does not apply to 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. We encourage HUD to place this language in the body of its final rule. Section 3400.103(X)(x) should read:

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. 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 does not take an application.

Similar wording is contained in the North Carolina SAFE Act (N.C.G.S. 53-244.030 (21) c.5) as an exemption from the definition of “mortgage loan originator”, and we believe this will help clarify the rule.

2. Factual Scenarios - Examples of Not Taking an Application

We suggest that the following activities when performed by a retailer or salesperson would not constitute “taking an application.”

- (a) Giving a home buyer access to a kiosk in order to complete an application on-line which goes directly to a funding source.
- (b) When requested by a lender, directing a home buyer to complete a paper application for financing.
- (c) Assisting a home buyer with general questions regarding the completion of a loan application by clarifying what type of information is necessary for the application.
- (d) Describing the typical steps that all lenders require a home buyer to take, in order to provide information for the lender to determine whether the home buyer qualifies for a loan or otherwise explaining the typical loan application process.
- (e) Transcribing information from the home buyer and directing to funding sources.

Section 3400.103(c)(2) – Clarify “Offers or Negotiates”

In its proposed rules, HUD provides three examples of offering or negotiating terms of a mortgage loan: (a) presenting mortgage loan terms to a borrower for acceptance; (b) communicating directly or indirectly with a borrower for purpose of reaching an understanding about prospective loan terms; or (c) recommending, referring, or steering a borrower to a particular lender or set of loan terms, in accordance with a duty to or incentive from any person other than the borrower. We would like to comment on all three examples.

1. **Presenting Mortgage Loan Terms to a Borrower for Acceptance.** We understand these examples are intended to focus on activities that are the equivalent of extending an offer. In order to qualify as an offer, the items or terms being presented to the home buyer must be items or terms that are capable of acceptance. Otherwise, an offer has not been made.

Therefore, we suggest that the following activities, when performed by a manufactured housing retailer or salesperson, are in the category of general customer assistance, and do not rise to the level of an “offer” under the SAFE Act:

- (a) Giving the home buyer a list of available financing sources, without recommending any of the sources.
 - (b) Merely sharing general information about a financing source, such as available financing.
 - (c) Acting as a conduit between the home buyer and the financing source, without engaging in specific discussion of financing options from a particular funding source.
 - (d) Discussing hypothetical financing options, i.e. options not related to a specific financing source.
 - (e) Presenting a list of available financing options, without recommending a specific option or lender.
2. **Communicating Directly or Indirectly with a Borrower for Purpose of Reaching an Understanding about Prospective Loan Terms.** We understand that it is HUD’s intention to clarify that the SAFE Act applies to communications between the home buyer and the retailer or the salesperson that rises to the level of mutuality, i.e., agreement on specific loan terms.

Therefore, we recommend that the final rule clarify that the following communications between a home buyer and a retailer or salesperson do not rise to the level of “negotiating” under the SAFE Act.

- (a) Discussing the home buyer’s ability to afford a particular home, i.e, examples of monthly payments for a particular home.
 - (b) Discussion of various alternative financing options.
 - (c) Presentation and/or discussion of generic facts sheet or generic rate sheets.
3. **Recommend, Refer or Steer A Borrower to a Particular Lender or Set of Loan Terms, in Accordance with a duty to or Incentive from any Person Other than the Borrower.** We understand that in order for a retailer or sales person to trigger this example, the retailer or salesperson must act as a result of a duty to a financing source, or the retailer or salesperson acts in order to receive an incentive from the financing source. Without the duty to the financing source or

the incentive from the financing source, this example of offering or negotiating will not be met.

Therefore, we recommend that the final rule clarify that the following examples do not constitute recommending, referring, or steering a home buyer.

- (a) Forwarding completed applications to only those financing sources that will consider the home buyer's application.
- (b) Submitting completed application to a limited scope of lenders.
- (c) Giving the home buyer a list of available financing sources without recommending any of the sources.

NCMHA seeks HUD's concurrence that the following do not qualify as a duty or incentive.

- (a) The desire to sell a manufactured or modular home.
- (b) A salesperson's commission resulting from the sale of a manufactured or modular home.
- (c) A salesperson's salary.

We request HUD's guidance on whether the following items are considered incentives or duty to act on behalf of the financing source.

- (a) A pre-arranged agreement between the retailer or sales person and the financing source with regard to available financing and underwriting guidelines.

4. **Compensation or Gain.** The receipt of compensation or gain is critical to the trigger of licensing requirements under the SAFE Act. We therefore seek HUD's agreement that the following examples are not considered compensation or gain:

- (a) A salesperson's sales commission for the sale of a manufactured or modular home to the extent that the commission received is the same in a cash transaction as that in a financed transaction. In this situation, there is no direct or indirect correlation between the compensation or gain and the taking of an application or the offering or negotiating of a loan.
- (b) Any benefit which is the same in a financed transaction as that in a cash transaction. In this situation, there is no direct or indirect correlation between the compensation or gain and the taking of an application or the offering or negotiating of a loan.

Loan Processor. Section 3400.23 of the proposed rule provides that a loan processor is an individual who performs his or her duties at the direction of and subject to the supervision and instruction of a licensed loan originator. We seek HUD's clarification that a licensed loan originator, licensed in North Carolina, who supervises an individual

who tangentially performs clerical and support tasks, is not required to be that individual's direct supervisor. As long as the licensed loan originator directs, supervises and instructs the loan processor, he or she is not required to be the loan processor's immediate/direct supervisor.

De Minimis Exemption. We encourage HUD to follow the recommendation of the Federal Agencies and consider a de minimis exception for certain individuals. In their draft final rule, the Federal Agencies suggest that an individual who does not regularly or principally function as a loan originator, for example has acted as a loan originator for 5 or fewer residential mortgage loans in the past 12 months, is not subject to the SAFE Act. Similarly, we ask HUD to consider those small manufactured housing communities who may take very few applications in a 12 month period. Consideration is requested based on the uniqueness of the industry. A small community is not motivated by the same incentives as a mortgage lender. A community is motivated to find the best home for the buyer and maintain that person within their community. These are typically family-run businesses with very few home sales within any 12-month period.

Loan Assumptions. We encourage HUD to agree that assumptions are not the equivalent of a new loan subject to the SAFE Act because assumptions do not result in the extinguishment of an existing loan and the replacement by a new loan, but rather the loan is assumed by a new obligor. We strongly urge HUD to consider the importance of consistency in the application of the SAFE Act and apply the rationale from the Federal Agencies draft final rule, that individuals engaged in assumptions are not acting as loan originators as defined in the SAFE Act.

Application of the SAFE Act to the Manufactured and Modular Housing Industry.
Recognize that compliance with state consumer protection laws applicable to manufactured housing is required and allowed under SAFE.

In North Carolina, there is a long-standing system of laws regulating the licensing, bonding and warranties offered by manufactured home retail dealers. (Article 9A, Chapter 143 of N.C. General Statutes).

Included in this framework of laws are consumer protections relating to purchase agreements. Whenever a retail seller of a manufactured home takes a consumer deposit toward the purchase of a home, the retailer must provide the customer with a written purchase agreement setting forth a description of the home and all accessories, the purchase price of the home, and

“the estimated terms of financing the purchase, if any, including the estimated interest rate, number of years financed, and monthly payment.” N.C.G.S. 143-143.21A (a) (5)

Failure to comply with this law subjects the retail dealer or salesperson to sanctions by the state Manufactured Housing licensing board - civil penalties, license suspension, or license revocation depending on the number and severity of the offense. Deposits taken in violation of this requirement must be refunded.

We request that HUD's final rules clarify that when a retail dealer is acting in compliance with state consumer protection laws such as this, the retailer or salesperson is not “offering” or “negotiating” the terms and conditions of a residential mortgage loan under the SAFE Act.

Implementation of the SAFE Act through NMLSR is not Meeting the Goals of the law. HUD is required to oversee the successful implementation of the NMLSR system. This requires state licensing of individuals acting as loan originators, including obtaining a unique identifier. Although not a prerequisite of the SAFE Act, the NMLSR creates sponsorship of an individual loan originator as a condition precedent to license approval. An individual loan originator can not work until he or she is sponsored by an entity in the NMLSR. Typically, the sponsoring entity must be the loan originator's employer.

In the factory-built housing industry, at least three types of entities may employ loan originators: (i) personal property-only finance lenders; (ii) retail sellers of factory-built homes; and (iii) owners of manufactured housing communities. In North Carolina, these entities typically hold licenses from various state agencies. Because NMLSR does not include these licenses in its system, these entities are unable to sponsor their employees. This is a fatal flaw in the NMLSR system. We encourage HUD to address this NMLSR flaw by creating an exempt status to allow duly licensed personal property finance lenders, retail sellers and community owners to sponsor their loan originator employees.

NCMHA and its members thank you for the opportunity to present our comments on these important rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'F. Brad Lovin', with a stylized flourish at the end.

F. Brad Lovin
Executive Director