

## NMLS Policy Recommendation

### **Subject:** MLO Licensing Requirements for Individuals Working with Non-profit Housing Organizations

April 23, 2010

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**Issue:** The SAFE Act requires the licensure of an individual who takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan, for compensation or gain. While the SAFE Act does not provide a clear threshold, depending upon certain criteria, including the absence of a commercial context, this definition may not encompass employees of non-profit housing organizations that originate residential mortgage loans or provide financial counseling and aid for low income borrowers and other individuals in financial distress.

**Recommendation:** In reviewing the mortgage activities of individuals working with non-profit housing organizations and counseling agencies, state regulators may determine that a MLO license is not required based on criteria that demonstrates that the lending or counseling activities of the individual do not meet the commercial context connotations of the compensation and gain requirements for licensure or that such activities are performed in an ancillary manner which does not merit a licensing requirement. A state making such a determination should be considered to be in compliance with the SAFE Act unless otherwise directed by the Department of Housing and Urban Development.

**Background:** While state regulators recognize the potential for abuse of the non-profit status and do not endorse the adoption of a blanket exemption for all non-profit housing lenders and counselors, there are certain models or programs of non-profit housing organizations whose lending and counseling activities do not meet the commercial context contemplated by the SAFE Act.

#### Housing Counseling

Bona fide non-profits have an express commitment to serve their communities and to act in the interests of their clients and the income generated through the activities of non-profit housing counselors is typically unrelated to the outcome of the counseling. In this sense, housing counselors are analogous to attorneys who are exempt from state licensing under the state SAFE Acts and HUD's Proposed Rules, if they act in the normal course of their profession, in that any mortgage loan originator activities are ancillary to their efforts to serve clients. Because of the numerous national, state and local homeownership preservation initiatives involved and the broad range of non-profit organizations providing housing counseling services, licensing determinations should be left to the states to determine on a case-by-case basis.

#### Non-profit Housing Lenders

The SAFE Act does not provide an exemption for employees merely by the fact that they are an employee of an organization organized as a non-profit. Clearly, individuals working for non-profits that operate in a commercial context should be subject to licensure. The SAFE Act, by

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working through state law, affords the latitude to state regulators in making the determination as to when a non-profit's activities are such that it operates outside the commercial context connotations of the SAFE Act. The HUD Commentary on the Model State Law affirms that "...there are some limited contexts where offering or negotiating residential mortgage loan terms would not make an individual a loan originator." The examples noted in the Commentary are triggered mainly by the lack of a formality and commercial context in the mortgage-related activity which we believe exists in the operations of many bona fide non-profit housing organizations.

State regulators should have the discretion to determine when individuals who work for bona fide non-profit community organizations that promote affordable housing and financing or that offer homeownership education and counseling do not meet the commercial context connotations of the compensation and gain requirement for licensure. Some of the factors to be considered in making a determination would include:

- the organization's funding sources;
- whether the organization has a tax exempt status as a charitable organization, such as under Section 501(c)(3) of the Internal Revenue Code;
- the loan terms and rates of mortgage loans originated or products offered, i.e. is the organization helping borrowers obtain credit at or below market rates or on terms more advantageous than are commercially available;
- whether the organization's primary purpose is to serve the public through helping low to moderate income borrowers or addressing other community credit and housing needs;
- the organization's compensation structure, i.e. whether there is a commission or other compensation structure that incentivizes the employees to steer consumers into certain types of loans or whether employees are compensated on a salary basis;
- whether the organization charges its clients fees in connection with the loan origination or other services and whether such fees are below standard commercial rates;
- whether the organization makes any profit on its loan products or services;
- whether financial literacy programs or homeownership education are provided in conjunction with the loan origination services; and
- whether the organization provides or requires training of their employees.

As noted above, such a determination should be made on an individual case-by-case basis and a determination made only after the state regulator reviews the non-profit organization's lending operations and structure.