

October 3, 2008

John Reed, Chairman
American Credit Union Mortgage Association
P.O. Box 400955
Las Vegas, NV 89140

Re: Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

Dear Mr. Reed:

You have asked several questions regarding the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Licensing Act), which was enacted as Title V of Subdivision A of the Housing and Economic Recovery Act of 2008. Pub. L. No.110-289, 122 Stat. 2659 (July 30, 2008). Your questions and our responses are set out below.

The SAFE Licensing Act reflects congressional intent to encourage uniformity among the states in terms of licensing and regulation for the residential mortgage industry. Among other provisions, the law encourages the states, acting through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, to establish a nationwide mortgage licensing system and registry. All loan originators would be licensed through or registered with the system. SAFE Licensing Act, §1502. If a state fails to adopt a law requiring mortgage loan originators to register with the nationwide system within a specified time, the law directs the Department of Housing and Urban Development to establish a parallel system to accomplish the same objectives. *Id.* at §1508. The law makes other provisions governing background checks, initial training for loan originators, and maintenance of a publicly-accessible database of employment and disciplinary history concerning loan originators. *Id.* at §§1505, 1512(d).

Your questions focus on the scope of the new law. First, you ask if the law extends to individuals who are engaged in the origination of second mortgages and home equity lines of credit. Yes, the law defines residential mortgage loan as “any” loan primarily for consumer or household purposes secured by a mortgage, deed of trust or similar instrument creating a security interest in a dwelling, as defined in the Truth in Lending Act, or real property on which a dwelling is intended to be constructed. *Id.* at §1503(8). The definition is not limited to first mortgages and includes second mortgages and home equity loans.

Second, you ask if the definition of a loan originator includes front line credit union staff, including call center employees. As you noted, the new law

determines whether an individual meets the definition based on the individual's duties, not job title. The distinction is between an individual assisting a consumer in applying for a mortgage, for example, by discussing rates and terms, including different substantive options that might be available, or an individual engaged simply in completing administrative or clerical tasks necessary for the processing of the loan. If an individual has authority to negotiate terms, discuss and counsel about available options, and provide and explain legally required disclosures, the individual is fulfilling loan originator duties. *Id.* at §1503(3). If, on the other hand, an individual is merely receiving calls and referring the caller to a loan officer who will actually accept the application, or making calls to obtain information necessary for loan processing or underwriting, without engaging in a discussion of available rates or terms, the individual is not an originator. *Id.* at §1503(4).

Third, you ask if individuals who are employees of a state chartered credit union must obtain a license or if they need only register. As you noted, the law creates a distinction between employees of depository institutions and other individuals, but makes no distinction between state and federally chartered depository institutions. *Id.* at §§1503(2),(7),(11). The law directs the federal bank regulatory agencies (defined to include NCUA) to develop a system through which depository institution employees must register with the nationwide system and obtain a unique identifier. *Id.* at §1507. At present, no such system exists; however, in our view, individuals who are loan originators and employees of a state chartered credit union need not obtain a state license in order to engage in loan origination activities on behalf of their employer credit union. Instead, these individuals must only register with the nationwide system and obtain the unique identifier once the federal regulators develop the system for doing so.

We think the answer with respect to credit union service organizations (CUSOs) is different. The law treats employees of depository institution subsidiaries the same as employees of the depository institution, if the subsidiary is owned by the depository institution and regulated by a federal banking agency. *Id.* at §1503(7)(A)(ii). In the case of CUSOs, however, NCUA does not have direct regulatory oversight or enforcement authority. Instead, our regulation permits federal credit unions to invest in or lend only to CUSOs that conform to the limits specified in the CUSO rule. 12 C.F.R. Part 712. NCUA has not, historically, asserted that CUSOs or their employees are exempt from applicable state licensing regimes, and the SAFE Mortgage Licensing Act does not alter that approach. Nor does our rule have any applicability to CUSOs owned by state chartered credit unions.¹ Individuals employed by CUSOs that engage in loan origination activities, whether the CUSO is owned by a state or a federal credit union, would need to be licensed in accordance with applicable state requirements.

¹ In April 2008, the NCUA Board issued a proposed rule that would extend some provisions of the CUSO rule to state chartered institutions. See 73 Fed.Reg. 23982 (May 1, 2008). The proposal has not yet been finalized.

Mr. John Reed

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You may address any questions concerning this matter to Staff Attorney Ross Kendall or me.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

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