

**Presented:**

2011 Mortgage Lending Institute

September 15-16, 2011, Four Seasons Hotel, Austin, TX

October 13-14, 2011, Belo Mansion, Dallas, TX

**TEXAS MORTGAGE LENDING:  
LICENSING AND REGISTRATION****Michael K. O'Neal**

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# Texas Mortgage Lending: Licensing and Registration

## I. Overview.

States have enacted, among other mortgage lending restrictions or requirements, laws requiring entities and individuals to obtain licenses or registrations to undertake various mortgage lending activities (*e.g.*, making, purchasing, selling, servicing).<sup>1</sup> These licensing or registration laws frequently include exemptions for federally or state-chartered depository institutions.<sup>2</sup> They sometimes also include exemptions for an affiliate or subsidiary of a depository institution. This paper is intended to provide an overview regarding licensing and registration requirements which apply to mortgage lending in Texas. **THIS PAPER IS NOT A DEFINITIVE EXPLANATION OF THE FEDERAL AND TEXAS LAWS APPLICABLE TO MORTGAGE LENDING LICENSING AND REGISTRATION AND SHOULD NOT BE RELIED UPON AS LEGAL ADVICE REGARDING THE MEANING OF ANY PROVISIONS OF THESE LAWS.**

**Practice Tip – Qualification to Do Business.** States generally require entities organized in other states and desiring to transact business in their state to obtain a certificate of authority. This is a separate issue from whether a license or registration is required.

**Practice Tip – Commercial Mortgage Licensing.** Some states' mortgage lender licensing requirements apply to commercial mortgage lending. Generally, these state laws describe the licensing requirement using broader terminology for security property applicability, such as a lien on real estate or security interest in real property, and are silent as to loan purpose and, therefore, do not limit applicability to personal, family, or household purposes. Certain statutes specifically include commercial purpose loans for coverage.

## II. Federal Licensing and Registration.

**A. Secure and Fair Enforcement for Mortgage Licensing Act.** The Secure and Fair Enforcement for Mortgage Licensing Act (the "SAFE Act")<sup>3</sup>, enacted on July 30, 2008, mandates a nationwide licensing and registration system for residential mortgage loan originators.<sup>4</sup> Passed in response to the mortgage crisis, the SAFE Act is intended to enhance consumer protection and reduce fraud by directing states to adopt minimum uniform standards for licensing and registration of residential mortgage loan originators and to participate in a

<sup>1</sup> Certain state licensing laws apply to first lien mortgage lending only. Many also cover subordinate lien mortgage loans.

<sup>2</sup> Exemptions under state licensing acts are either from the act in its entirety or the licensing requirement. In some states, approval of an entity's exempt status may require some form of registration or notification.

<sup>3</sup> The SAFE Act was enacted as part of the Housing and Economic Recovery Act of 2008, Pub. L. 110-289, Division A, Title V, Sections 1501-1517, 122 Stat. 2654, 2810-2824 (July 30, 2008), *codified at* 12 U.S.C. §§ 5101-5116.

<sup>4</sup> The SAFE Act is designed to establish the minimum requirement for the licensing of individuals, not entities. Therefore, licensing requirements for entities are outside of the scope of the SAFE Act.

nationwide mortgage licensing system and registry database of residential mortgage loan originators. Specifically, the SAFE Act requires all states to provide for a licensing and registration regime for mortgage loan originators who are not employed by institutions regulated by certain Federal banking agencies<sup>5</sup> and the Farm Credit Administration (the "FCA") (collectively, the "Agencies"). In addition, the SAFE Act requires the OCC, FRB, FDIC and NCUA, through the Federal Financial Institutions Examination Council (the "FFIEC"), and the FCA to develop and maintain a system for registering mortgage loan originators employed by Agency-regulated institutions. In this context, the SAFE Act specifically prohibits an individual from engaging in the business of residential mortgage loan origination without first obtaining and maintaining annually:

1. a registration as a registered mortgage loan originator and a unique identifier if employed by an Agency-regulated institution (*i.e.*, Federal registration), or
2. a license and registration as a state-licensed mortgaged loan originator and a unique identifier.

The SAFE Act requires that Federal registration and state licensing and registration must be accomplished through the same online registration system, the Nationwide Mortgage and Licensing System and Registry (the "NMLSR").<sup>6</sup>

In 2009, the 81st Texas Legislature adopted three bills -- House Bills 10, 2774 and 2779 -- to implement SAFE Act compliant legislation. *See* Part III entitled "Texas Licensing and Registration" for an overview regarding the Texas Safe Act legislation. The Agencies published their final rule to implement the Federal registration system on July 28, 2010.<sup>7</sup>

As originally enacted, the SAFE Act required the U.S. Department of Housing and Urban Development ("HUD") to make the determination whether a state complies with the minimum requirements. Effective July 21, 2011, the SAFE Act was transferred to the Consumer Financial Protection Bureau (the "CFPB") for administration and enforcement.<sup>8</sup>

A detailed discussion regarding the SAFE Act is beyond the scope of this paper.

**B. HUD Final Rule.** HUD has published its long-awaited final rule setting the minimum standards that states must meet to comply with the SAFE Act.<sup>9</sup> The rule took effect August 29, 2011. All states, the District of Columbia, Puerto Rico, Guam and the Virgin Islands have enacted SAFE Act legislation, and the HUD final rule provides the minimum standards

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<sup>5</sup> The "Federal banking agencies" include the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "FRB"), the Federal Deposit Insurance Corporation (the "FDIC"), and the National Credit Union Administration (the "NCUA").

<sup>6</sup> The Conference of State Bank Supervisors ("CSBS") and the American Association of Residential Mortgage Regulators ("AARMR") were charged with the responsibility of establishing a nationwide mortgage licensing system for the residential mortgage industry. Registration is through NMLSR. NMLSR does not screen or approve registrants. NMLSR is only a repository of, and conduit for, information registered mortgage loan originators.

<sup>7</sup> 75 Fed. Reg. 44656 (July 28, 2010), corrected and republished at 75 Fed. Reg. 51623 (August 23, 2010).

<sup>8</sup> Dodd-Frank Act § 1061(a).

<sup>9</sup> 76 Fed. Reg. 38464 (June 30, 2011) (codified at 24 C.F.R. pt. 3400).

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First appeared as part of the conference materials for the  
45<sup>th</sup> Annual Mortgage Lending Institute session  
"Texas Mortgage Lending: Licensing and Registration"