

## **NATIONAL ASSOCIATION OF REALTORS®**

### **SAFE Act Final Rule: Seller Financing and REOs**

The SAFE Act requires licensing of loan originators under state laws that meet minimum federal requirements. HUD has established minimum standards in its final rule published in the Federal Register on June 30, 2011. HUD's overall responsibility for interpretation, implementation, and compliance transfers to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011.

#### **Who must be licensed as a loan originator?**

The SAFE Act requires licensing of individuals who engage in the business of a loan originator. To trigger the licensing requirements under the SAFE Act, the financing must be primarily for personal, family, or household use. An individual engages in the business of a loan originator if the individual, in a commercial context and habitually or repeatedly, takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain.

#### **How often does a seller have to provide seller financing to be subject to licensing?**

HUD chose not to decide how frequently an individual may provide financing before reaching the requisite degree of habitualness. NAR expects CFPB to defer to reasonable state laws on the number of seller financing transactions that would trigger licensing, but only time will tell.

#### **How can sellers financing the sale of their properties be sure to avoid licensing?**

A seller financing the sale of his or her own property would completely avoid the issue of licensing by retaining the services of a licensed loan originator.

#### **What about the sale of your own residence, a vacation home, or inherited property?**

HUD advises that, "absent evidence to the contrary, the sale and financing the sale of one's own residence, vacation home or property, or inherited property" is not likely to be considered to be engaging in the business of a loan originator.

#### **Are real estate brokerage activities exempt?**

Brokers and agents are exempt from loan originator licensing, to the extent they are performing only real estate brokerage activities and not compensated by a lender or loan originator (or their agents). In cases where a real estate broker/agent receives a commission from the lender for the sale of a property owned by the lender (including an REO), individuals must only be licensed as

a loan originator if they engage in the business of a loan originator. Brokers/agents rarely, if ever, take an application or offer to negotiate terms of a residential mortgage loan for such transactions and typically would not have to be licensed as loan originators.

**When do the rules go into effect?**

State laws requiring licensing are all already in effect. HUD issued earlier guidance and a model statute to assist the states in connection with enactment of their laws. HUD's final rule took effect on August 29, 2011.