

Playing It SAFE

Understanding the New Hampshire Mortgage Licensing Law

Federal Secure and Fair Enforcement of Mortgage Licensing (SAFE) Act. The SAFE Act was adopted by Congress in 2008 for the purpose of enhancing consumer protection and reducing fraud by increasing disclosure and accountability of individual mortgage loan bankers, brokers, originators, and servicers through a national licensing system. The SAFE Act requires all states to adopt uniform licensing standard. A state's failure to do so will result in the U.S. Department of Housing and Urban Development (HUD) taking over that state's licensing of mortgage originators. The SAFE Act also creates a national registry of licensees, the Nationwide Mortgage Licensing System and Registry (NMLS). NMLS has promulgated the uniform applications used to obtain licenses mandated under the SAFE Act.

New Hampshire's Response. The Federal Act contained a number of recommendations for states to follow, and staff of the NH Banking Department represented during testimony before the House Commerce Committee in 2009 that deviations from the federal language would compel HUD to disqualify NH's efforts to meet the terms of the law, in which case HUD would assume responsibility for licensing loan originators in New Hampshire. The Legislature passed HB 610 (Chapter 290, Laws of 2009), substantially amending RSA 397-A and other statutes. These laws were again amended in 2010 to provide some limited exemptions for governmental entities and some non-profit organizations (SB 339 – Chapter 220, Laws of 2010; and HB 1279 – Chapter 234, Laws of 2010).

The NH SAFE Act sets up a 2-tier licensing system: one for individual mortgage originators and another for entities that employ them. For an individual to be licensed, s/he must work for a licensed entity (or be a licensed mortgage broker). These requirements are in RSA 397-A. Similar standards and requirements for mortgage servicers are in RSA 397-B.

Who Must Be Licensed? Under the SAFE Act, anyone who "originates" a "mortgage loan" must be licensed. The definitions of these terms are very broad and capture many activities and instruments that have not historically been construed to be mortgage loan origination.

The statute's definition of "mortgage loan" covers not only those loans that would traditionally be called mortgages, but "any loan, including a first or second mortgage loan, primarily for personal, family, or household use which is secured in whole or in part by a mortgage, deed of trust, or other equivalent consensual security interest upon a dwelling or any interest in real property or in residential real estate. (RSA 397-A:1,XIV).

This includes **any** loan that is secured by a lien on residential real property with up to four units. Because the statute also incorporates by reference the Truth in Lending Act's definition of "residential real estate," it is not limited to owner-occupied dwellings.

The definition of "originator" includes anyone who, for direct or indirect compensation, "takes a mortgage application or offers, negotiates, solicits, arranges, or finds a mortgage loan or who assists a consumer in obtaining or applying to obtain a mortgage loan by, among other things, advising on loan terms (including rates, fees, and other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a mortgage loan or who offers or negotiates terms of a residential mortgage loan." (RSA 397-A:1,XVII).

This definition covers a very wide range of activities, including

- Loan counseling (even by HUD approved counselors)
- Seller financing by developers
- Home improvements secured by a lien

- Attorneys advising clients on loan terms, including modifications, unless such representation is “ancillary” to such representation
- Exemptions include negotiating terms of mortgages on your own residence or that of an immediate family member

What Entities Must Be Licensed? The license requirement for individuals requires that “an originator’s license is only in effect when such originator is associated with a particular licensed mortgage banker, servicer, or broker.” This has the effect of requiring that ***any employer of an originator must itself be licensed, unless it fits within one of the law’s narrow exemptions.***

As originally adopted by the NH Legislature in 2009, the SAFE Act provided for no exemptions to the entity licensing requirement. In response to significant concerns raised by many non-profit and governmental entities, the Legislature amended the SAFE Act in 2010 to provide for two narrow exemptions to the entity licensing requirement:

- Governmental entities – New Hampshire state or municipal governments or the agencies, instrumentalities and corporations – if such entities are authorized by statute to do mortgage lending
- Non-profit organizations (501(c)(3) or (4)) that either
 - Exclusively make or issue commitments for mortgage loans on residential property to be financed by a governmental entity with public funds, or negotiate, place, assist in placement of, find, or offer to negotiate, place, assist in placement of, or find mortgage loans on residential property to be financed with public funds exclusively under a contract with a governmental entity; or
 - Make or issue commitments for mortgage loans on residential property and are determined by the NH Banking Department to be organized exclusively for benevolent or charitable purposes for the benefit of New Hampshire consumers.

Because of the narrowness of these exemptions, most governmental entities that employ licensed originators will need to be licensed, except by order of the Banking Commissioner providing an exemption.

Even if an entity is determined by the NH Banking Department to be exempt, its employees who do mortgage origination will still need to be licensed. Exempt entities still must register with NMLS.

Licensing Requirements. Licensure requirements include State Police criminal record checks, credit checks, and fingerprinting (for submission to the FBI) of originators and the principals or owners of the mortgage banker or broker with whom that originator is affiliated. For entities that are not exempt, this will include those with executive decision making capacity, including the directors of non-exempt non-profit organizations.

Penalties for Failure to Comply. Among other equitable remedies such as the authority to issue a cease and desist order, the Banking Commissioner may also assess fines of up to \$25,000 per violation of the SAFE Act. The statute of limitations for enforcement is six years after a violation. Enforcement orders of the Commissioner may be enforced by the Attorney General in superior court, which may impose additional penalties of up to \$10,000 and imprisonment.

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