



Bulletin C-13-1

To: Nonprofit Organizations

SUBJECT: Nonprofit Organizations and Mortgage Loan Originators under the Tennessee Residential Lending, Brokerage and Servicing Act

DATE: August 13, 2013

NOTICE: This Bulletin supersedes the Memorandum issued by the Department on April 8, 2010, relative to Non-Profit Mortgage Loan Originators under Title 45, Chapter 13

The Tennessee Residential Lending, Brokerage and Servicing Act, Tenn. Code Ann. §§ 45-13-101, *et seq.* (the "Mortgage Act"), was substantially amended effective July 31, 2009. One of the stated purposes of the Mortgage Act, as amended, is to carry out the purposes, and to be compliant with the requirements, of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. §§ 5101, *et seq.* (the "SAFE Act") [*see* Tenn. Code Ann. § 45-13-102].

Among other things, the SAFE Act directs states to adopt licensing and registration requirements for residential mortgage loan originators that meet the minimum standards specified in the SAFE Act. The United States Department of Housing and Urban Development ("HUD") was charged with overall responsibility for interpretation, implementation and compliance with the SAFE Act. Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") transferred that responsibility to the Consumer Financial Protection Bureau ("CFPB") as of July 21, 2011. If the CFPB determines that a state's mortgage loan originator licensing standards do not meet the minimum requirements of the SAFE Act, the CFPB is charged with establishing and implementing a licensing system for mortgage loan originators in that state.

The Mortgage Act provides, at Tenn. Code Ann. § 45-13-201(a) that no person shall act as a mortgage lender, mortgage loan broker or mortgage loan servicer in Tennessee without first obtaining a license under the Mortgage Act, and Tenn. Code Ann. § 45-13-301(a) provides that an individual, unless specifically exempted, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in Tennessee without first obtaining and

maintaining annually a license issued by the Commissioner, and without first being sponsored by a licensed mortgage lender, mortgage loan broker, or registered industrial loan and thrift company.

The Commissioner is authorized, pursuant to Tenn. Code Ann. § 45-13-201(d), to exempt in whole or in part from the requirements of the Mortgage Act additional entities or classes of entities, not including individuals, that the Commissioner finds inappropriate to include to effectuate the purposes of the Mortgage Act, so long as the exemption is compliant with and does not impede the purposes of the SAFE Act. The Commissioner is also authorized, pursuant to Tenn. Code Ann. § 45-13-201(e), upon approval or consent by HUD (now the CFPB by virtue of the Dodd-Frank Act), to exempt in whole or in part from the Mortgage Act additional individuals or classes of individuals, such as those working for bona fide nonprofit corporations and government agencies, that the Commissioner finds inappropriate to include to effectuate the purposes of the Mortgage Act.

On June 30, 2011, prior to the transfer of HUD's responsibilities under the SAFE Act to the CFPB, HUD published a final rule codifying the minimum licensing standards and HUD's oversight responsibilities under the SAFE Act, and also clarifying or interpreting certain statutory provisions that pertain to the scope of the SAFE Act's licensing requirements that pertain to the implementation, oversight and enforcement responsibilities of the states. In the final rule, HUD clarified that the SAFE Act does not cover employees of bona fide nonprofit organizations who act as loan originators with respect to residential mortgage loans outside a commercial context. The final rule was codified by HUD as 12 CFR Parts 30 and 3400, effective August 29, 2011, and was republished by the CFPB as Regulation H at 12 CFR Part 1008, effective December 30, 2011.

Regulation H provides, at 12 CFR § 1008.103(a), that, except as provided in 12 CFR § 1008.103(e), in order to operate a SAFE-compliant program, a state must prohibit an individual from engaging in the business of a loan originator with respect to any dwelling or residential real estate in the state, unless the individual first: (1) registers as a loan originator through, and obtains a unique identifier from, the Nationwide Mortgage Licensing System and Registry ("NMLSR"), and (2) obtains and maintains a valid loan originator license from the state. However, pursuant to 12 CFR § 1008.103(e)(7)(i), a state is not required to impose the prohibitions required under 12 CFR § 1008.103(a) on an employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower. For residential mortgage loans to have terms that are favorable to the borrower, a state must determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context [*see* 12 CFR § 1008.103(e)(7)(iv)].

Regulation H further provides, at 12 CFR § 1008.103(e)(7)(ii), that for an organization to be considered a bona fide nonprofit organization under 12 CFR § 1008.103(e)(7), a state supervisory authority that opts not to require licensing of the employee must determine, under criteria and pursuant to processes established by the state, that the organization:

- (A) Has the status of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;
- (B) Promotes affordable housing or provides homeownership education, or similar services;
- (C) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;
- (D) Receives funding and revenue and charges fees in a manner that does not incentivize employees to act other than in the best interests of its clients;
- (E) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;
- (F) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and
- (G) Meets other standards that the state determines are appropriate.

Pursuant to 12 CFR § 1008.103(e)(7)(iii), a state must periodically examine the books and activities of an organization it determines is a bona fide nonprofit organization and revoke its status as a bona fide nonprofit organization if it does not continue to meet the criteria under 12 CFR § 1008.103(e)(7)(ii).

In its final rule, HUD also commented on the provisions of the final rule relative to nonprofit organizations and employees of nonprofit organizations. HUD likened individuals who act as originators with respect to certain kinds of loans as employees of “bona fide” nonprofit organizations, as defined by the final rule, to government employees who act as loan originators pursuant to government-funded and regulated housing assistance programs, in that they do so for public or charitable purposes, and not for the profit of another individual or entity, and do not act in a commercial context. HUD also recognized that the mere fact of an organization’s 501(c)(3) status is insufficient to conclude that its employees who act as loan originators necessarily do so for the benefit of the borrower and for public or charitable purposes, rather than for the profit of the organization or another entity or individual, which is the reason for the inclusion in the final rule of the criteria in 12 CFR § 1008.103(e)(7)(ii). With respect to whether particular mortgage terms are favorable to borrowers, HUD commented that the applicable regulator should examine the interest rate that the home loan would carry; the charges that are imposed on the borrower for origination, application, closing and other costs; whether the mortgage includes any predatory characteristics; the borrower’s ability to repay the loan; and the term of the mortgage. Finally, to ensure that all of the individual’s actions in the course of acting as a loan originator are subject to the control of the bona fide nonprofit organization and are consistent with the organization’s mission and practices, HUD commented that the individual must be an employee of the organization and must be acting within the scope of his or her employment.

In consideration of the requirements of the Mortgage Act, the SAFE Act and Regulation H, and of the good work performed by nonprofit organizations and their employees in promoting affordable housing and homeownership education to Tennesseans, the Department is issuing

this Bulletin to provide a means by which bona fide nonprofit organizations and their employees may seek, obtain and renew exemptions from the licensing requirements of the Mortgage Act.

Beginning immediately, a nonprofit organization and its employees may apply for an exemption from the licensing requirements of the Mortgage Act by submitting to the Department a completed Application for Exemption Form, a copy of which is attached to this Bulletin. The Form may also be accessed on the Department's website via the following link: <http://www.tennessee.gov/tdfi/forms.shtml>. There is no fee for filing an Application or for obtaining an exemption.

In order to obtain an exemption for itself and its employees, each nonprofit organization must file a completed Application for Exemption Form with the Department, and must receive confirmation of the exemption from the Department. The exemption must be renewed annually by filing a completed Application for Exemption Form with the Department on or before December 31 of each year. If an organization fails to timely file a completed Application, or does not continue to meet the criteria for exemption, or fails to provide any requested documentation, then the Commissioner may revoke the exemption.

Any questions regarding this Bulletin may be directed to the Department's Compliance Division, via telephone at (615) 741-3186, or via e-mail at askmortgage.licensing@tn.gov.

Greg Gonzales
Commissioner