



FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

Docket No. R-1622 and RIN 7100 AF-16

Regulations H and K: Registration of Mortgage Loan Originators

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is repealing its regulations that incorporated the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act). Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws, including the S.A.F.E. Act, from the Board to the Bureau of Consumer Financial Protection (Bureau). In December 2011, the Bureau published an interim final rule, incorporating the S.A.F.E. Act into its Regulations G and H. In April 2016, the Bureau finalized the interim final rule. Accordingly, the Board is repealing its S.A.F.E. Act regulations.

DATES: The final rule is effective **[Insert date 30 days after publication in the Federal Register]**.

FOR FURTHER INFORMATION CONTACT: Clinton Chen, Senior Attorney, (202) 452-3952, Justyna Bolter, Attorney, (202) 452-2686, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The S.A.F.E. Act mandates a nationwide licensing and registration system for residential mortgage loan originators.¹ The S.A.F.E. Act requires residential mortgage loan originators employed by depository institutions, subsidiaries that are owned and controlled by a depository institution and regulated by a federal banking agency, and institutions regulated by the Farm Credit Administration (FCA) to register with the Nationwide Mortgage Licensing System and Registry, obtain a unique identifier, and maintain such registration. Originally, the federal registration requirements of the S.A.F.E. Act were implemented through a coordinated rulemaking of the federal banking agencies and the FCA, the agencies with authority over the federal registration requirements under the S.A.F.E. Act (the “federal registry agencies”).² The Board incorporated the S.A.F.E. Act in its Regulation H, 12 CFR part 208, Subpart I, and Regulation K, 12 CFR 211.24(k).

Title X of the Dodd-Frank Act amended a number of consumer financial protection laws, including the S.A.F.E. Act.³ The Dodd-Frank Act transferred rulemaking authority for the S.A.F.E. Act from the federal registry agencies to the Bureau, effective July 21, 2011.⁴ In connection with the transfer of rulemaking authority

¹ 12 U.S.C. 5101 *et seq.*

² 75 FR 44656 (July 28, 2010). The rules were promulgated by the Board; the Office of the Comptroller of the Currency (OCC); the Federal Deposit Insurance Corporation (FDIC); the Office of Thrift Supervision, Treasury (OTS); the FCA; and the National Credit Union Administration (NCUA).

³ Pub. L. 111-203, 124 Stat. 1376 (2010).

⁴ *See* Pub. L. 111-203, sections 1061 & 1100. The Dodd-Frank Act generally excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. Pub. L. 111-203, section 1029. The rulemaking authority retained by the Board under Section 1029 of the Dodd-Frank Act does not extend to residential mortgages. Thus, all rulemaking

for the S.A.F.E. Act to the Bureau, the Bureau published an interim final rule to incorporate the S.A.F.E. Act into its own Regulations G and H, 12 CFR parts 1007 and 1008 (Bureau Interim Final Rule).⁵ In April 2016, the Bureau finalized the Bureau Interim Final Rule as part of a larger initiative of finalizing interim final rules.⁶ The Bureau's regulations that incorporate the S.A.F.E. Act substantially duplicate the federal registry agencies' coordinated rules and cover the entities that were previously subject to the federal registry agencies' rules. In September 2018, the Board published a proposal to repeal its regulations that incorporated the S.A.F.E. Act (Proposed Rule).⁷

II. Discussion

The Board received two comments on the Proposed Rule. One commenter supported the Proposed Rule, while the other urged the Board to retain the regulations that it proposed to repeal. For reasons discussed below, the Board is finalizing the repeal of its regulations that incorporated the S.A.F.E. Act as proposed.

The commenter that supported the Proposed Rule stated that the registration of mortgage loan originators is burdensome for a small community bank that originates only a handful of mortgage loans each year. The Board notes that, although it is repealing its regulations that incorporated the S.A.F.E. Act, the statutory requirement to register mortgage loan originators still exists in the S.A.F.E. Act, as incorporated into the Bureau's regulations.

authority under the S.A.F.E. Act, which pertains only to mortgage loan originator registrations, was transferred to the Bureau.

⁵ 76 FR 78483 (Dec. 19, 2011).

⁶ 81 FR 25323 (April 28, 2016).

⁷ 83 FR 48402 (Sept. 25, 2018).

The commenter that opposed the Proposed Rule urged the Board to retain its regulations that incorporated the S.A.F.E. Act in order to retain the ability to issue any S.A.F.E. Act rules in the future. The Board's authority to issue rules, however, is determined by statute. If Congress were to amend the S.A.F.E. Act in the future to restore rulemaking authority to the Board, the Board could adopt rules under that authority at that time. Accordingly, the Board is finalizing the repeal of its regulations that incorporated the S.A.F.E. Act as proposed.

III. Final Regulatory Flexibility Analysis

An initial regulatory flexibility analysis (IRFA) was included in the proposal in accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq. In the IRFA, the Board requested comment on the effect of the Proposed Rule on small entities and on any significant alternatives that would reduce the regulatory burden on small entities. The Board did not receive any comments. The RFA requires an agency to prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the final regulation. Based on its analysis, and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The final rule is intended to reflect Congress's transfer of rulemaking authority for the S.A.F.E. Act from the Board to the Bureau by repealing the Board's regulations that incorporated the S.A.F.E. Act. The repeal does not impose any recordkeeping, reporting, or compliance requirements on any entities. Any entity that is currently covered by the S.A.F.E. Act is subject to the rules issued by the Bureau, located in 12

CFR part 1007 and 1008. Accordingly, the Board does not expect this final rule to have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Federal Reserve by the Office of Management and Budget (OMB). The final rule contains no collections of information under to the PRA. *See* 44 U.S.C. 3502(3).

Accordingly, there is no paperwork burden associated with the final rule.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Consumer protection, Crime, Currency, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, 3353, and 3906-

3909; 15 U.S.C. 78b, 781(b), 781(i), 780-4(c)(5), 78q, 78q-1, 78w, 1681s, 1681w, 6801 and 6805, 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104b, 4106, and 4128.

Subpart I – [Removed and Reserved]

2. Subpart I, consisting of §§ 208.101 through 208.105 and appendix A to subpart I, is removed and reserved.

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

3. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 et seq., 1818, 1835a, 1841 et seq., 3101 et seq., 3901 et seq., and 5101 et seq.; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

§ 211.24 [Amended]

4. In § 211.24, paragraph (k) is removed.

By order of the Board of Governors of the Federal Reserve System, May 9, 2019.

Margaret McCloskey Shanks,
Deputy Secretary of the Board.

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