Chapter 12

Uniform State Test

Chapter Objectives

- Identify the elements that affect the Uniform State Test
- Recognize the regulatory authority of federal and state mortgage entities
- Recognize the definitions of components and concepts in the mortgage industry
- Identify licensing laws and requirements that regulate MLOs and other mortgage professionals
- Describe compliance conditions and practices that apply to the mortgage industry

SAFE Act State Regulatory Authority

- **Housing and Economic Recovery Act**
  - Signed into law on July 30, 2008
  - Designed to assist with the recovery of America's residential housing market
  - The SAFE Act is a key component of HERA
    - Required CSBS and AARMR to establish and maintain a nationwide mortgage licensing system and registry
    - The CSBS and AARMR developed a model state law
    - States required to use MSL to establish state minimum standards for MLO licensing and registration

Public Law 110-289

State Regulatory Authority

- **SAFE Act**
  - Has jurisdiction in all states, as well as the U.S. territories of Puerto Rico, U.S. Virgin Islands, and Guam
- **Mandates of Public Law 110-289**
  - **Industry**: All residential MLOs must be state-licensed or federally registered
  - **States**: All states must have a system of licensing in place for residential MLOs that meets national definitions and minimum standards
  - All states must license MLOs through the NMLS

Public Law 110-289

12.1 Knowledge Check

1. The SAFE Act requires all MLOs to be _____with the NMLS.

A. federally registered

B. state-licensed

C. federally registered and state-licensed

D. federally registered or state-licensed

12.1 Knowledge Check

2. The SAFE Act established _____ minimum standards for prelicensing education and annual continuing education of MLOs.

A. national

B. state

C. national and state

D. national or state

State Regulatory Authority

- **Agency Names**
  - Naming Option Examples
    - Department of Financial Institutions
    - Mortgage Regulatory Commission
    - Division of Banking

12 CFR § 1008

State Regulatory Authority

- **Agency Responsibilities**
  - Provide effective supervision and enforcement of the law
  - Ensure that all state-licensed MLOs operating in the state are registered with the NMLS
  - Regularly report violations, as well as enforcement actions and other relevant information, to NMLS
  - Have process for challenging information contained in NMLS
  - Have established mechanism to assess civil money penalties for individuals acting as MLOs in the state without a valid license or registration
  - Have 1 of these financial protection options in place:
    - Minimum net worth or surety bond requirement that reflects the dollar amount of loans originated by a residential MLO, or
    - Recovery fund paid into by MLOs

12 CFR § 1008

12.2 Knowledge Check

1. Under the SAFE Act, the _____ is responsible for ensuring the proper and legal control of MLO licensing within the state.

A. AARMR

B. CSBS

C. NMLS

D. state regulatory authority

12.2 Knowledge Check

2. Which of the following is a method that a state can use to meet the requirement under the SAFE Act that each state's MLO regulatory authority have a financial protection option in place?

A. a minimum net worth requirement

B. a recovery fund payment requirement

C. a statewide federal protection fund

D. a surety bond requirement

State Regulatory Authority

- **State's Scope of Authority**
  - Administer, interpret, and enforce SAFE Act
  - Make rules/regulations implementing SAFE Act
  - Conduct investigations and examinations
  - Access MLO or mortgage entity records for purpose of licensing
  - Review, investigate, or examine any person subject to SAFE Act, as often as necessary in order to carry out (i.e., audit records) purposes of the Act

12 CFR § 1008

State Regulatory Authority

- **Reporting Requirements**
  - Licensee, individual, or person subject to SAFE Act must make or compile reports or prepare other information as directed by the state regulatory authority in order to carry out the purposes of Act
- **Mortgage Call Reports**
  - Companies that hold a state license or state registration through NMLS required to complete a Mortgage Call Report (MCR)
  - Fannie Mae and Freddie Mac Seller/Servicers or Ginnie Mae Issuers must submit an Expanded MCR

12 CFR § 1008

State Regulatory Authority

- **Mortgage Call Reports**
  - Residential Mortgage Loan Activity (RMLA)
    - Collects application, closed loan, individual MLO, line of credit, servicing, and repurchase information by state
    - Due quarterly, within 45 days of end of calendar quarter
  - Financial Condition (FC)
    - Collects financial information at the company level; does not have to be completed by the state
    - Standard filers: Due annually, within 90 days of company's fiscal year end as reported in Company (MU1) Form
    - For expanded filers: Due quarterly at same time as RMLA

12 CFR § 1008

State Regulatory Authority

- **State's Scope of Authority**
  - Control access to any documents and records of the licensee or person under examination or investigation
  - Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations
  - Impose a civil penalty up to $28,474 per violation if, after notice and opportunity for hearing, a person is found to have violated or failed to comply

12 CFR § 1008

State Regulatory Authority

- **State Department Obligations**
  - Must establish a process whereby MLOs may challenge information entered into the NMLS
  - May be responsible for setting, or resetting as necessary, renewal or reporting dates
  - Must establish requirements for amending, transferring, or surrendering a license or any other license status change the state regulatory authority deems necessary for participation in the NMLS

12 CFR § 1008

12.3 Knowledge Check

As set forth by the SAFE Act, a state regulatory authority may impose a civil penalty up to _____ per violation on an MLO found guilty of violating a requirement of the SAFE Act.

A. $25,000

B. $20,000

C. $25,705

D. $28,474

State Regulatory Authority

- **Regulatory Limitations**
  - Do not have the authority to impose a prison sentence
  - Cannot require MLOs, processors, and underwriters employed by credit unions and depository institutions to be state-licensed under the SAFE Act
    - Exception requires employees be registered with the NMLS with an NMLS Unique Identifier

12 CFR § 1008

State Regulatory Authority

- **CFPB Examinations**
  - Authority to examine whenever the Bureau determines that an examination of an MLO is necessary
  - Examine costs may have to be paid by the MLO or the employing entity, or both
- **Fee Assessments**
  - The CSBS, AARMR, or the Bureau may charge reasonable fees to cover the costs of maintaining and providing access to information from the NMLS

12 CFR § 1008

MLO Compliance Standards

- **SAFE Act**
  - **Prohibited Conduct and Practices**
  - **MLO License Required**
    - Taking a mortgage loan application
    - Offering or negotiating loan terms of a mortgage loan
    - Receiving any “thing of value” for compensation or gain when performing as MLO
    - Engaging in business of MLO with habitualness or repetition
    - Performing as a loan processor or underwriter who is engaged in the business of MLO while employed as an independent contractor
    - Functioning as attorney engaged in business of MLO

12 CFR § 1008

12.4 Apply Your Knowledge

Identify whether the following mortgage related tasks call for License Required (**LR**) or No License Required (**NLR**)

1. Discusses available loan programs with the borrower

LR

2. Receive an application in the mail and forward the information without review

NLR

3. Collect verification of employment

NLR

4. Explain contents of an application to a borrower

NLR

5. Describe loan application process to a borrower

NLR

12.4 Apply Your Knowledge

6. Receive compensation for originating a mortgage loan

LR

7. Arrange closing and other aspects of the mortgage process

NLR

8. Seller who provides financing to homebuyers for three or fewer properties in a year

NLR

9. Provide the borrowers an interest rate quote

LR

MLO License Compliance

- **Taking a Loan Application Defined**

  Receipt by an individual, for the purpose of facilitating a decision whether to extend an offer of loan terms to a borrower or prospective borrower, of an application as defined in Section 1008.23 (a request in any form for an offer, or a response to a solicitation of an offer, of residential mortgage loan terms, and the information about the borrower or prospective borrower that is customary or necessary in a decision whether to make such an offer)

Section 1008.103(c)(1)

MLO License Compliance

- **Taking a Loan Application Defined**
  - Example #1 **LR** Action
    - Ed has received a borrower's or prospective borrower's application request or application information from a person who took the application request/information from a borrower or prospect
  - Example #1 **LR** Meaning
    - Ed cannot avoid licensing requirements by having another person physically receive information or complete an application and then passing it on to him

Section 1008.103(c)(1)

MLO License Compliance

- **Taking a Loan Application Defined**
  - Example #2 **LR** Action
    - Linda takes the application but is not responsible for verifying application information
  - Example #2 **LR** Meaning
    - Any person, including Linda or a mortgage broker, who collects and sends information to a lender who makes the ultimate lending decision, requires an MLO license

Section 1008.103(c)(1)

MLO License Compliance

- **Taking a Loan Application Defined**
  - Example #3 **LR** Action
    - Nick only inputs the information into an online application or other automated system. He is not involved in approval of the loan, including determining whether the consumer qualifies for the loan
  - Example #3 **LR** Meaning
    - Similar to Linda, Nick is still deemed to be “taking a residential mortgage loan application” even if he is not ultimately responsible for approving the loan

Section 1008.103(c)(1)

MLO License Compliance

- **Not Taking a Loan Application Defined**
  - Example **NLR** Actions
    - Receiving application through mail and forwarding it, without review, to loan approval personnel
    - Explaining contents of application or how to complete borrower information on application
    - Generally describing the loan application process
  - Example **NLR** Meaning
    - Taking a residential mortgage loan application excludes individual whose only role is physically handling a completed application form or transmitting a completed form to a lender on behalf of a borrower or prospective borrower

Section 1008.103(c)(1)

MLO License Compliance

- **Offering or Negotiating Terms Defined**
  - Example #1 **LR** Actions
    - Presenting for consideration by a borrower or prospective borrower particular loan terms, whether verbally, in writing, or otherwise, even if:
      - Further verification of information is necessary
      - The offer is conditional
      - Other individuals must complete the loan process
      - The individual lacks authority to negotiate the interest rate or other loan terms
      - The individual lacks authority to bind the person who is the source of the prospective financing

Section 1008.103(c)(1)

MLO License Compliance

- **Offering or Negotiating Terms Defined**
  - Example #2 **LR** Actions
    - Communicating directly or indirectly with a borrower or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms even if a mutual understanding is not subsequently achieved
      - Includes responding to a borrower's or prospective borrower's request for a different rate or different fees on a pending loan application by presenting to the borrower or prospective borrower a revised loan offer

Section 1008.103(c)(1)

MLO License Compliance

- **Not Offering or Negotiating Terms Defined**
  - Examples **NLR** Actions
    - Providing general explanations or descriptions in response to consumer queries, such as explaining loan terminology, lending policies, or product-related services
    - Arranging the loan closing or certain other aspects of the loan process
    - Providing a borrower or prospective borrower with information unrelated to loan terms
    - Making an underwriting decision about whether the borrower or prospective borrower qualifies for a loan

Section 1008.103(c)(1)

MLO License Compliance

- **Not Offering or Negotiating Terms Defined**
  - Examples **NLR** Actions
    - Explaining or describing the steps that a borrower or prospective borrower would need to take in order to obtain a loan offer
    - Communicating on behalf of an MLO that a written offer has been sent to a borrower or prospective borrower without providing any details of that offer
    - Offering or negotiating loan terms solely through a third-party licensed MLO, as long as non-licensed individual does not represent to public that he can/will perform covered activities and does not communicate with borrower/potential borrower

Section 1008.103(c)(1)

MLO License Compliance

- **For Compensation or Gain Defined**
  - The individual receives or expects to receive, in connection with the individual's activities, any "thing of value"
  - Includes, but not limited to, payment of a salary, bonus, or commission
  - "Thing of value" is interpreted broadly and is not limited only to payments that are contingent upon the closing of a loan

Section 1008.103(c)(1)

MLO License Compliance

- **Engaged in Business of MLO Defined**
  - Requirement
    - An individual who acts (or holds himself out as acting) as MLO in commercial context and with some degree of habitualness or repetition is considered to be engaged in the business of MLO
  - Commercial Content
    - Individual acts for purpose of obtaining anything of value for himself or for an entity or individual
  - Habitualness or Repetition
    - MLO or source of prospective financing performs other origination activities with a degree of habitualness or repetition

Section 1008.103(c)(1)

MLO License Compliance

- **Not Engaged in Business of MLO**
  - Examples
    - An individual who only acts as MLO in providing financing for sale of that individual's own residence
    - An individual who only acts as MLO in providing financing for sale of a property owned by that individual
    - A parent who only acts as MLO in providing loan financing for own child

Section 1008.103(c)(1)

MLO License Compliance

- **Not Engaged in Business of MLO**
  - Examples
    - Government entity employee who acts as MLO only pursuant to official duties as employee of that government entity
    - Nonprofit organization employee who acts as MLO pursuant to duties as employee of that organization
    - Individual who does not act as an MLO habitually or repeatedly, if the source of prospective financing does not provide mortgage financing or perform other loan origination activities habitually or repeatedly

Section 1008.103(c)(1)

MLO License Compliance

- **Loan Processor or Underwriter MLO LR Activities**
  - Engage in business of MLO as defined in SAFE Act
  - Perform clerical or support duties and who is an independent contractor
  - Collect, receive, distribute, or analyze information in connection with the making of a credit decision and who is an independent contractor
  - Communicate with consumer to obtain information necessary for making a credit decision and who is an independent contractor

Section 1008.103(c)(1)

MLO License Compliance

- **Loan Processor or Underwriter MLO NLR Activities**
  - Performs only clerical or support at the direction of and subject to the supervision and instruction of licensed/registered/exempt individual or entity
  - An employee of loan processing/underwriting company that provides services to mortgage lenders/brokerage firms under contract, provided employee performs only clerical/support duties at the direction of and subject to supervision and instruction of licensed MLO employee of the same loan processing/underwriting company
  - An individual who does not otherwise perform the activities of MLO; is not involved in receipt, collection, distribution, or analysis of information common for processing/underwriting; and does not communicate with consumer

Section 1008.103(c)(1)

12.5 Knowledge Check

An individual who acts as an MLO in providing financing for the sale of her own residence _____ require licensing as long as it is not a habitual and frequent activity.

A. would

B. would not

MLO License Compliance

- **MLO LR for Attorney**
  - Licensed attorney is engaged in the business of an MLO as defined by SAFE Act
- **MLO NLR for Attorney**
  - Licensed Attorney performs activities that come within the definition of an MLO but such activities are:
    - Considered by the state's court of last resort to be part of the authorized practice of law within the state
    - Carried out within an attorney-client relationship
    - Accomplished by the attorney in compliance with all applicable laws and standards.

12 CFR 1008, Appendix D

MLO Compliance Standards

- **Licensee Advertising Requirement**
  - Unique identifier of any person originating a residential mortgage loan must be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements.
  - This includes business cards or websites and any other documents as established by rule, regulation, or order of the state regulatory authority

MLO Compliance Standards

- **Licensee Prohibited Advertising Practices**
  - Must not solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting
  - Must not make, in any manner, any false or deceptive statement or representation, or optional add-on, including with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising

Chapter 12 Quiz

1. Under the SAFE Act, the state regulatory authority is responsible for the following minimum requirements EXCEPT

A. enforcement of SAFE Act regulations.

B. establishment of a monetary assessment penalty process for individuals who practice as MLOs without a license.

C. maintenance of records and enforcement of violations for public access.

D. registration of all MLOs with the NMLS.

Chapter 12 Quiz

2. To prove an individual performs only clerical duties under MLO supervision, which of the following provides an acceptable actual nexus?

A. individual's employment contract

B. MLO assigns and monitors the individual's clerical tasks

C. MLO's title is manager and the individual's title is secretary

D. organizational chart

Chapter 12 Quiz

3. Under the SAFE Act, which of the following is NOT a minimum requirement for each state's MLO regulatory authority?

A. establish a statewide federal protection fund

B. have a process in place for challenging information contained in the NMLS

C. provide effective supervision and enforcement of the law

D. regularly report violations and enforcement actions

Chapter 12 Quiz

4. An individual's act is "for compensation or gain" when that individual

A. achieves a profit (capital gain) from the transaction.

B. has ownership interest in the transaction.

C. is a W-2 employee.

D. receives something of value.

Chapter 12 Quiz

5. Performing which task requires MLO licensing?

A. analyzing a loan application that is received from a consumer

B. communicating details of a loan closing arrangement

C. making an underwriting decision

D. offering or negotiating loan terms

Chapter 12 Quiz

6. Which is an example of "offering or negotiating the terms of a loan?"

A. communicating details of loan closing arrangements

B. communicating directly or indirectly with a borrower in order to reach a mutual understanding about prospective residential mortgage loan terms

C. describing the steps that a borrower or prospective borrower would need to take in order to obtain a loan offer

D. providing general explanations or responses to consumer inquiries about loan programs