

HR 5369- Manufactured Housing Licensing Clarification Act of 2010

Background

When Congress adopted the “Secure and Fair Enforcement for Mortgage Licensing Act” (SAFE Act) as part of the Housing and Economic Recovery Act of 2008, it did not intend to include individuals who perform administrative and clerical tasks as mortgage loan originators as long as they do not offer or negotiate loan terms for compensation or gain.

Congress’ intent to exclude certain activities performed by individuals is clear. Section 1503(3) of the SAFE Act excludes individuals who perform purely “administrative or clerical tasks.”

Although not directed by Congress, a Model State Law (“MSL”) was drafted by state regulators to assist the states in enacting SAFE compliant laws. The MSL amended the definition of loan originator to remove the Congressional exclusion of individuals performing administrative or clerical tasks.

Also, Congress expressly stated that two of the objectives of the SAFE Act are to create uniformity and reduce regulatory burden. There have been unintended consequences as a result of the states’ implementation of the SAFE Act which will result in duplicative disclosures to the consumer for the same transaction, conflicts between rates and charges, and in many instances duplicative examinations for the same transactions by different state agencies.

Purpose of HR 5369

HR 5369 in no way is intended to provide an outright exemption for the manufactured and modular housing industries from provisions in the SAFE Act.

Many states have adopted the amended definition of mortgage loan originator which is not consistent as passed by Congress. Due to the removal of this exemption, legislative clarification is necessary to clearly define that certain activities performed by manufactured housing retailers are excluded from the SAFE Act as administrative and clerical tasks. Undertaking these administrative and clerical duties also does not meet the statutory definition of a “loan originator” because such individuals do not engage in SAFE Act loan origination activities for compensation or gain.

Like “real estate brokers” whose activities are specifically addressed and exempted from the requirements of SAFE Act licensing by Congress, retailers are in the business of selling homes---they are not in the loan origination business. H.R. 5369 provides this clarification.

In addition, we believe the SAFE Act mandates that states allow for the application of the law in conjunction with existing state lender licensing requirements already in place. In short, individual mortgage loan originators should be able to directly affiliate themselves with personal property lenders operating under their current licenses. Additionally, individuals only originating personal property loans should have education and testing appropriate for that activity. H.R. 5369 provides this direction.

Because the process of implementing the SAFE Act has resulted in hardship for this industry, we believe Congress has the ability to influence states and HUD to ensure that appropriate measures are put in place to correct this situation.