



United States Government Accountability Office
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July 14, 2011

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Spencer Bachus
Chairman
The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of Housing and Urban Development: SAFE Mortgage
Licensing Act: Minimum Licensing Standards and Oversight
Responsibilities*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Housing and Urban Development (HUD), entitled "SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities" (RIN: 2502-AI70). We received the rule on June 30, 2011. It was published in the *Federal Register* as a final rule on June 30, 2011, with an effective date of August 29, 2011. 76 Fed. Reg. 38,464.

The final rule sets forth the minimum standards for the state licensing and registration of residential mortgage loan originators, requirements for operating the Nationwide Mortgage Licensing System and Registry (NMLSR), and HUD's federal oversight responsibilities pursuant to the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act or Act), to ensure proper monitoring and enforcement of states' compliance with statutory requirements. This 2008 law directs states to adopt loan originator licensing and registration requirements that meet the minimum standards specified in the SAFE Act.

Enclosed is our assessment of HUD's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of

the procedural steps taken indicates that HUD complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Camille E. Acevedo
Associate General Counsel for Legislation
and Regulation Divisions
Department of Housing and Urban Development

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ENTITLED
"SAFE MORTGAGE LICENSING ACT:
MINIMUM LICENSING STANDARDS
AND OVERSIGHT RESPONSIBILITIES"
(RIN: 2502-AI70)

(i) Cost-benefit analysis

HUD states that the final rule does not add to the effects of the SAFE Act on any person or entity, and in itself, therefore, imposes no costs, nor creates any benefits, nor causes any transfers. To comply with the Office of Management and Budget's (OMB) direction and OMB Circular A-4, HUD provides an analysis of the counterfactual situation where "no" state or territory implemented SAFE Act-compliant licensing requirements for loan originators (and/or repealed pre-existing statutes that met the SAFE Act requirements), and HUD (or its successor agency, the Consumer Financial Protection Bureau) was responsible for enforcing the minimum requirements in the SAFE Act, as codified by the final rule, for the entire country. In that counterfactual situation, HUD estimates that the low to high range of annualized costs over 5 years would be between \$128 million and \$803 million at 7 percent and \$118 million and \$763 million at 3 percent.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

According to HUD, because the SAFE Act is not directed to entities, large or small, but to individuals, and because this rule is directed to HUD's oversight responsibilities, it certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. §§ 1532-1535

HUD states that title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector, while section 201 of title II limits the assessment to enforceable duties imposed by the regulation and excludes duties that "incorporate requirements specifically set forth in law." HUD explains that the rule does not add to the duties of states or individuals set forth in the SAFE Act statute, but instead clarifies classes of activities and individuals that

are subject to the SAFE Act's statutory requirements. Accordingly, HUD notes that the costs identified under Executive Order 12,866 are the costs of HUD's and individuals' compliance with the SAFE Act's statutory requirements in the counterfactual situation in which HUD were to implement licensing systems in all 50 states. According to HUD, because the final rule does not add to the incorporated requirements specifically set forth in law, it is not subject to the requirements of UMRA.

(iv) Other relevant information or requirements under Acts and Executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On December 15, 2009, HUD published a proposed rule to clarify its responsibilities under the SAFE Act and the minimum standards that the SAFE Act provides for states to meet in licensing loan originators. 74 Fed. Reg. 66,548. On February 17, 2010, HUD published a notice extending the public comment period until March 5, 2010, due to severe inclement weather conditions and closures of government and private organizations that may have prevented many members of the public from submitting comments. 75 Fed. Reg. 7149. The public comment period on the proposed rule closed on March 5, 2010, and HUD received 5,132 public comments in response to the December 2009 proposed rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

In its submission to the Comptroller General, HUD did not include an analysis under this Act.

Statutory authorization for the rule

HUD states that the final rule is authorized under 12 U.S.C. §§ 1701q-1, 1703, 1723i, 1735f-14, and 1735f-15; 15 U.S.C. § 1717a; 28 U.S.C. § 2461 note; and 42 U.S.C. § 1437z-1 and 3535(d).

Executive Order No. 12,866 (Regulatory Planning and Review)

As HUD notes in its Executive Order 12,866 statement, notwithstanding a determination by HUD and OMB that it is the statute, not HUD's rule, which has a significant economic impact, the rule is designated economically significant because the rule, in codifying the provisions of the SAFE Act in regulation, reflects the economic significance of the statute and should have a designation reflective of the impact of the statute on the economy.

Executive Order No. 13,132 (Federalism)

HUD states that this rule merely implements the statutory requirements of the SAFE Act and does not have federalism implications beyond those in the Act. The final rule does not itself impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.