




STATE OF ALABAMA  
STATE BANKING DEPARTMENT



MEMORANDUM

To: Whom It May Concern

From: Scott Corscadden, Supervisor, Bureau of Loans 

Re: Interim Rule - De Minimis Exemption from the Alabama SAFE Act –  
Individuals Engaged in Limited Seller Financing

Date: April 14, 2011

This Interim Rule, issued pursuant to Code of Alabama §5-26-2(b) and §5-26-4, is intended to address the issue of individual seller financing as it relates to the Alabama Secure and Fair Enforcement for Mortgage Licensing Act of 2009 or Alabama S.A.F.E. Mortgage Licensing Act. Specifically, this Interim Rule addresses the Department's decision to exempt an individual, as seller of his or her own real property, who originates five (5) or fewer residential mortgage loans within any twelve (12) month period from all licensing requirements of the Alabama S.A.F.E. Act and delay a determination of whether such an individual must be licensed until HUD publishes a final rule on the federal SAFE Act.

A primary objective of the Alabama S.A.F.E. Act is to carry out the purposes of and to be compliant with the requirements of the federal SAFE Act. The federal SAFE Act provides that the U.S. Department of Housing and Urban Development ("HUD") must determine whether Alabama's S.A.F.E. Act complies with the minimum requirements of federal law. While states are charged with enacting licensing standards that meet the requirements of the federal SAFE Act, overall responsibility for interpretation, implementation and compliance with the federal SAFE Act rests with HUD. If HUD finds that the Alabama S.A.F.E. Act does not meet the minimum requirements of the federal SAFE Act, HUD must establish a regulatory regime to license and regulate individuals meeting the definition of a mortgage loan originator.

To date, HUD, as the agency charged with the overall interpretation, implementation and enforcement of the federal SAFE Act, has not issued formal guidance or clarification regarding the scope of the Alabama S.A.F.E. Act's licensing requirements. In response to general inquiries involving "sellers of owner-financed dwellings," however, HUD has stated the following:

HUD recognizes-and the 5300 comments it received in response to its proposed rule reflect-that there are certain contexts in which HUD will need to issue clear direction in its final rule regarding the scope of coverage of individuals who must be licensed under the SAFE Act. HUD recognizes that state regulators making reasonable interpretations of the SAFE Act may find it prudent to delay determinations of whether certain individuals must be licensed until a final rule is published.

I am of the opinion that this statement provides HUD's recognition of the possibility of the need for actions such as this Interim Rule to exempt an individual, as seller of his or her own real property, who originates five (5) or fewer residential mortgage loans within any twelve (12) month period from the Alabama S.A.F.E. Act and delay a determination of whether such an individual must be licensed until HUD publishes a final rule. HUD has previously stated that there are some limited contexts where taking an application or offering or negotiating residential mortgage loan terms would not make an individual a mortgage loan originator under the federal SAFE Act.

It is the Department's position that the "formality and commercial context" implied by the SAFE Act's licensing requirements is absent where an individual does the rare and occasional seller financing. Accordingly, I find it appropriate to exempt an individual, as seller of his or her own real property, who originates five (5) or fewer residential mortgage loans within any twelve (12) month period from all licensing requirements of the Alabama S.A.F.E. Act and delay a determination of whether these individuals must be licensed until HUD publishes a final rule on the federal SAFE Act.

Please take notice that, when and if HUD issues a final rule, regulation, interpretation, or formal guidance of the federal SAFE Act that is contrary to this position, the Department will have no alternative but to rescind its position and enforce said final rule, regulation, interpretation, or formal guidance. Thus, if HUD makes a determination that the Department's position outlined in this Interim Rule is inconsistent with the federal SAFE Act; the Department reserves the right to withdraw its position in order to be consistent with federal law.

Please note that this exemption for limited seller financing is available only to individuals and is not applicable to business entities such as sole proprietorships, limited liability companies, corporations, etc.