



1325 G Street, NW, Suite 800
Washington, DC 20005

Tel (202) 220-2300
Fax (202) 376-2600
www.nw.org

March 02, 2010

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW; Room 10276
Washington, DC 20410-0500

Subject: Comments Regarding Proposed Rule:
SAFE Mortgage Licensing Act: HUD Responsibilities under the SAFE Act
Docket Number: FR-5271-P-01

Dear Public Comments Coordinator:

On behalf of NeighborWorks America (also known as Neighborhood Reinvestment Corporation) I want to thank you for the opportunity to provide comments in regard to the Proposed Rule regarding the "SAFE Mortgage Licensing Act: HUD Responsibilities Under the SAFE Act", as published in the Federal Register on Tuesday, December 15, 2009.

NeighborWorks America is generally supportive of the Proposed Rule as it applies to anyone directly involved in loan origination or loan modification, but has concern that since the regulation is written so broadly it might also apply to housing counselors employed by HUD-approved nonprofit housing counseling agencies, who have no direct role in actually providing mortgages or influencing mortgage terms/rates.

We believe the Proposed Rule as currently written would negatively impact the ability of nonprofit housing counseling agencies who provide pre-purchase and foreclosure intervention counseling, but who play no direct role in originating or modifying loans or negotiating the rates and terms of such loan originations or modifications. In some instances, the added costs and regulatory requirements associated with compliance with the Proposed Rule would result in fewer clients being served. In other instances, the added costs and regulatory requirements could threaten the very existence of the many small and thinly capitalized nonprofit counseling agencies.

NeighborWorks America believes the intent of the SAFE Act – to improve accountability on the part of loan originators, combat fraud, and enhance consumer protections – is supported by effective housing counseling. And, local nonprofit housing counseling agencies can be much more effective if they are not burdened by the added costs and requirements that would result from the Proposed Rule as written.

Recommendations Regarding Proposed Rule:

Exemption of HUD-Approved Housing Counseling Agencies from the Provisions of the Proposed Rule:

While supportive of the basic intent of the Proposed Rule, NeighborWorks America urges HUD to provide an exemption of the registration and licensing requirements for HUD-approved housing counseling agencies, and the housing counselors employed by such agencies. Such an exemption should apply to housing counselors providing pre-purchase counseling and/or foreclosure counseling.

Essentially, these agencies are in-effect already registered, through HUD, as HUD-approved housing counseling agencies. And these agencies are clearly listed on HUD's web-site and the U.S. Treasury Department's "Making Home Affordable" web site, as qualified and trusted sources of housing counseling.

Further, HUD has the authority (and has exercised its authority) to withdraw its HUD-approved status from any organization that does not continue to meet HUD's standards regarding program performance.

The role of HUD-approved nonprofit housing counselors, whether they are dealing with pre-purchase counseling, or foreclosure intervention counseling, is to create an informed consumer who can then (equipped with the information/knowledge provided by a counselor) go on to deal on their own with acceptance of the rates and terms of a loan origination or loan modification.

- Recognizing that some of the State housing finance agencies receiving funding from the National Foreclosure Mitigation Counseling program are using local nonprofit housing counseling agencies who may not be HUD-approved, and yet abide by high standards and provide high-quality service, it may be advisable for HUD to consider exemptions for counselors employed either by:
 - HUD-approved housing counseling agencies;
 - Grantees and sub-grantees receiving funding from the congressionally mandated and funded National Foreclosure Mitigation Counseling Program; and/or
 - Nonprofit housing counseling agencies that have endorsed and adhere to the "National Industry Standards for Homeownership Education and Counseling" – standards developed and endorsed by HUD, NeighborWorks America and other key players in the affordable housing and housing counseling fields.

The Proposed Rule, as written would impose a heavy burden on already over-burdened housing counseling agencies, and serve to disrupt the entire nonprofit housing counseling industry – even as these agencies are working to address the worst foreclosure crisis in our life-time.

Again, these nonprofit housing counselors are not direct loan originators or mortgage modifiers, it should be noted that HUD-approved housing counseling agencies are already subject to considerable oversight and regulation imposed by HUD, the Internal Revenue Service [to qualify for, and maintain their 501(c)(3), tax-exempt status] and various State regulations, including:

- Bi-annual program reviews by HUD
- Quarterly reporting to HUD – and quarterly reporting to the National Foreclosure Mitigation Counseling (NFMC) program for entities receiving NFMC funding
- Adherence to HUD's Housing Counseling Handbook standards

To be clear, NeighborWorks America is encouraging that this exemption should apply only to HUD-approved housing counseling agencies and the employees of such agencies. Other housing counseling agencies and/or organizations and individuals involved in housing counseling and/or loan modification services should not, in our view, be covered by this exemption.

Authority should be granted to States to exempt employees of State Housing Finance Agencies and State-approved nonprofit agencies:

Recognizing that the process to obtain "HUD-approved" status is quite involved and rigorous for local housing counseling agencies, and further recognizing that State housing finance agencies often partner with nonprofit housing counseling agencies who may not be HUD-approved, NeighborWorks America also urges that the Final Rule include language giving States the authority to exempt State housing finance agencies and State-approved nonprofits from the registration and licensing requirements of the SAFE Act, if individual States deem that to be appropriate.

We know that a number of States (such as the New York State Banking Department) have been using a system of exemption in which an agency must be a not-for-profit entity in order to apply for the exemption, but not all not-for-profit entities receive the exemption. The application process which agencies must go through, gives the State an opportunity to weed out the “illegitimate” not-for-profits. We believe the States should retain this authority to approve nonprofit entities which the State knows to be legitimate agencies.

Recommend Revised Definition of “compensation or gain”:

One of the issues which contributed to the current mortgage foreclosure crisis was the fact that mortgage brokers and others were often ‘incentivized’ through their compensation arrangements to push certain types of loan products – which provided higher returns to the loan originators, but were frequently not in the best interests of the borrower. It is definitely appropriate to subject these practices to regulation and control. However, NeighborWorks America believe the broad definition of “compensation or gain” within the Proposed Rule would seem to subject salaried employees of nonprofit housing counseling agencies, State housing finance agencies and other quasi-governmental entities who have no profit motivation in regard to the number or type of loans or mortgage modifications ultimately provided to the borrower, to the provisions of the Proposed Rule.

NeighborWorks America therefore urges that the definition of “compensation or gain” be clarified so that it does not include salaried compensation paid to employees of nonprofit housing counseling agencies and State housing finance agencies who do not receive commissions or incentives based on the number or type of loan transactions completed.

Acceptance of NeighborWorks America provided Training

HUD-approved housing counseling agencies are already engaged in training and testing programs which are specific to their work. Some of these training programs are administered by HUD, and others are provided (with support from HUD) by NeighborWorks America and others

Given the fact that Congress has specifically targeted \$18 million to date of the National Foreclosure Mitigation Counseling funds provided to NeighborWorks America, to build the mortgage foreclosure and default mitigation counseling capacity of HUD-approved housing counseling intermediaries and their partners, NeighborWorks America also urges HUD, to explicitly state within the Rule that States may recognize the training provided by NeighborWorks America as being acceptable in terms of meeting the training requirements associated with the SAFE Act. .

In addition to the funding provided through the National Foreclosure Mitigation Counseling program, NeighborWorks America has established an aggressive program to train foreclosure counselors and other mortgage-finance professionals across the country through a combination of multi-course, weeklong trainings at NeighborWorks Training Institutes and other venues, and specialized place-based training events. NeighborWorks America is the largest trainer of affordable housing and community development professionals in the country, and we believe that the Proposed Rule should articulate that States should be able to accept such training toward meeting the training requirements associated with the SAFE Act.

If an Exemption is not provided for HUD-approved Housing Counseling Agencies, an Extension of Time should be granted to Such Agencies:

In the event that the Final Rule does not include an exemption for HUD-Approved housing counseling agencies, NeighborWorks America strongly urges that an extension of time be granted for such agencies to comply with the registration and licensing provisions of the SAFE Act.

NeighborWorks America is aware that many HUD-approved housing counseling agencies (and other nonprofit organizations) contacted officials within their respective States some time ago (prior to the issuance of HUD’s Proposed Rule) to inquire whether the provisions of the SAFE Act applied to them.

These organizations were told time and again by State official that the SAFE Act would not apply to them. Clearly, there was no ambiguity or confusion about whether the Act would apply to for-profit mortgage originators. Therefore, NeighborWorks America is not supportive of a 'blanket extension' that would apply to everyone. But we would strongly support an extension for HUD-approved housing counseling agencies, in the event the requested exemption of such agencies is not granted.

In order to avoid a significant disruption to counseling service delivery in the midst of the current foreclosure crisis, NeighborWorks America would recommend a two-year extension for HUD-approve housing counseling agencies.

Background Information Regarding NeighborWorks America:

NeighborWorks America was established by Congress in 1978 as the Neighborhood Reinvestment Corporation. The Corporation receives a direct annual federal appropriation. The corporation's Board of Directors is made up of senior representatives of the federal financial regulatory agencies (the Federal Reserve; the Federal Deposit Insurance Corporation; The Comptroller of the Currency; the Office of Thrift Supervision; the National Credit Union Administration) and the Secretary of HUD.

The primary mission of NeighborWorks America is to expand affordable housing opportunities (rental and homeownership) and to strengthen distressed urban, suburban and rural communities across America, working through a national network of local community-based organizations, known collectively as the NeighborWorks network. The NeighborWorks network includes more than 235 nonprofit organizations, serving urban, suburban and rural communities across the United States -- in all 50 States, the District of Columbia and the Commonwealth of Puerto Rico.

Local NeighborWorks organizations provide a wide variety of services that reflect the needs of their neighborhoods and communities, and over the years, NeighborWorks has provided homeownership counseling to more than 750,000 families, and assisted nearly 200,000 families of modest means to become homeowners. NeighborWorks organizations also own and manage more than 73,000 units of affordable rental housing.

In FY 2009 alone, the NeighborWorks network generated nearly \$4 billion in direct reinvestment in distressed communities across the nation, and helped more than 300,000 low- and moderate-income families purchase homes, improve previously purchased homes; or live in safe, decent rental housing.

NeighborWorks America has a 30-year history of facilitating lending to non-conventional borrowers – including lower income families, borrowers with impaired credit and others who would not normally qualify for a conventional mortgage.

By providing quality pre-purchase homeownership counseling, financial fitness training and working with borrowers to improve their credit rating, improve their budgeting, and commit to a savings plan (including Individual Development Accounts and other vehicles), local NeighborWorks organizations are able to prepare foreclosure-resistant borrowers who qualify for reasonably priced traditional mortgage loans and achieve sustainable homeownership.

From our experience, we know that the best defense against mortgage delinquency and foreclosure is objective education and counseling before the borrower begins shopping for a home and selecting a mortgage product – or refinancing their home.

And the best home buyer counseling is provided through objective, well-trained non-profit agencies (including local NeighborWorks organizations and other HUD-approved housing counseling agencies) that put the consumers' and the communities' interest first.

We also know that homeowners' odds of success are increased even further when they have access to post-purchase counseling and homeowner education.

NeighborWorks America has been closely tracking the loan performance of the many low-income families assisted by NeighborWorks organizations over the years. *These loans continue to perform significantly better than subprime loans.* In fact, a comparison of the loan performance of a sample of borrowers counseled by NeighborWorks organizations indicates that their loans are:

- 10 times less likely to go into foreclosure than subprime borrowers;
- Nearly 4 times less likely to go into foreclosure than FHA borrowers; and
- Slightly less likely to go into foreclosure than Prime borrowers.

NeighborWorks America is a nationally recognized leader in the fight against foreclosures. The Corporation identified the problem of rising foreclosures over five years ago and, with the encouragement and support of our Board of Directors, created the NeighborWorks Center for Foreclosure Solutions -- an unprecedented partnership between leading nonprofit organizations as well as State, local and federal agencies and members of the mortgage lending and servicing sectors, that involves a comprehensive, multi-faceted approach to the foreclosure crisis.

NeighborWorks America and the National Foreclosure Mitigation Counseling Program

NeighborWorks America has also administered the National Foreclosure Mitigation Counseling Program, which has provided congressionally appropriated funding to HUD-approved housing counseling intermediaries, State housing finance agencies and local NeighborWorks organizations – funding which has supported the work of more than 1,700 sub-grantees, and as of February 2010 had provided foreclosure counseling to more than **1,00,000 individuals and families.**

It is from this base of experience that NeighborWorks America sets forth the above comments regarding the Proposed Rule.

Closing Comment:

NeighborWorks America would like to again thank HUD for its efforts to eliminate abuses within the loan origination and loan modification process, and for its consideration of these comments.

The basic elements of the SAFE Act and the Proposed Rule are long overdue, and strongly supported by NeighborWorks America.

NeighborWorks America fully supports having standards and requirements for all loan originators and individuals involved in mortgage modifications – including nonprofits directly involved in loan origination and/or mortgage modification.

Our request for an exemption should apply only to (as stated above) HUD-approved housing counseling agencies.

We believe that the requested exemption for HUD-approved housing counseling agencies will go a long way toward creating better informed consumers, which will serve as a further deterrent to the abuses which the SAFE Act and the proposed rule seek to eliminate.

Again, thank you for your consideration of these comments. Please feel free to contact me, or Steven Tuminaro, our Director of Public Policy and Legislative Affairs (at 202-220-2415 or stuminaro@nw.org) for any clarification of these comments.

Sincerely,

Kenneth D. Wade
Chief Executive Officer