



STATE OF CALIFORNIA  
BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
DEPARTMENT OF CORPORATIONS  
*Business Services and Consumer and Investor Protection*

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**Arnold Schwarzenegger**  
Governor

**Preston DuFauchard**  
California Corporations Commissioner

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**DATE: June 22, 2010**

**RELEASE No. 63-FS**

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**SAFE Act – Interim Licensing Relief for HUD-Certified Housing Counselors and Habitat for Humanity Volunteers and Employees**

This release addresses two separate inquiries by representatives of certain nonprofit entities concerning whether the Department of Corporations (Department) requires mortgage loan originator (MLO) licenses for: (1) individuals who work for housing counseling agencies certified by the U.S. Department of Housing and Urban Development (*HUD-certified housing counselors*); and (2) volunteers and employees of the forty-nine (49) *Habitat for Humanity* affiliates in California.

The Department is one of several California State agencies responsible for implementation of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289), commonly referred to as the "SAFE Act". The relevant part of this implementation process requires the Department to license all individuals who are responsible for mortgage loan origination. California Senate Bill 36 (Chap. 160, Stats. 2009), enables the Department to implement the federal SAFE Act. The Department regulates MLOs under the provisions of the California Finance Lenders Law (CFLL) and the California Residential Mortgage Lending Act (CRMLA). Consistent with the SAFE Act, SB 36, Sections 22013 and 50003.5 of the California Financial Code, provide that an MLO "means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan." (Emphasis added.) The Department must license MLOs by July 31, 2010, as required by the SAFE Act and California Senate Bill 36.

**HUD-Certified Housing Counselors**

HUD's Housing Counseling Program makes available foreclosure prevention counseling and homeless counseling services free of charge through HUD-certified housing counseling agencies. (See HUD's website under "Talk to a Housing Counselor" for more information.) Housing Counseling agencies participating in HUD's Housing Counseling Program are not permitted to charge customers for foreclosure prevention and homeless counseling services. Individual counselors must be trained and certified by HUD approved trainers. They must complete certification courses and meet continuing certification requirements. In addition, in order to be in compliance with HUD's directive of not charging fees for foreclosure and homeless loan counseling services, such services must be strictly separated from the lending functions of the agencies.

In light of the potential for a HUD-certified counselor to assist borrowers with the negotiation of modified loan terms, the refinancing of a loan, or the attainment of a new loan while engaging in foreclosure prevention counseling, a question has arisen regarding whether these counselors must be licensed under either the CFLL or the CRMLA as MLOs in accordance with the SAFE Act. The Department of Corporations does not consider HUD-certified counselors engaged in foreclosure prevention counseling to be MLOs when their activities are in conformance with HUD's requirements for certified counselors under HUD's Housing Counseling Program. The definition of MLO in both the CRMLA and the CFLL requires that an individual be engaging in loan origination activity for compensation or gain, thereby suggesting that licensure is required for individuals engaging in business activity in a commercial context. The Department does not consider HUD-certified foreclosure prevention counseling offered free of charge to borrowers facing financial hardships to be the activity intended to be regulated under the definition of MLO in the CFLL and the CRMLA.

**Habitat for Humanity**

Habitat for Humanity ("Habitat") is a 501(c)(3) nonprofit corporation which builds houses for low income individuals and families who meet certain specified criteria. Clients of Habitat are expected to provide "sweat equity" to a project prior to becoming a homeowner. The homes are then sold to the client, with financing provided by Habitat. Mortgages range from 20 – 30 years, depending on the "partner family's" ability to make home loan payments. The average Habitat house cost in Northern and Southern California is \$175,000 - \$200,000, and in the Central Valley, \$115,000 - \$150,000. The homeowners' monthly mortgage payments are used to build more Habitat houses for other low-income individuals and families.

The Department considers the following facts, as represented by Habitat, in determining whether employees and volunteers of Habitat are required to obtain an MLO license under the CFLL and the CRMLA:

1. Habitat does not charge its clients any loan origination fees in connection with the origination of the residential mortgage loan.
2. Habitat's volunteers do not receive compensation for their services in connection with the residential mortgage loan.
3. Habitat makes no profit on the sale of the houses to its clients (a profit is not included in (or built into) the price of the house).
4. Habitat only makes "no-interest" mortgage loans to its clients.

Based on the foregoing, the Department of Corporations concludes that Habitat's employees and volunteers are not required to obtain an MLO license under the CFLL or the CRMLA. Similar to the analysis regarding HUD-certified housing counselors, the Department does not consider the activities of Habitat and its employees and volunteers to be within the commercial context contemplated in the definition of MLO under both the CFLL and the CRMLA.

### **Conclusion**

Based on the foregoing, the Commissioner does not require HUD-certified counselors or Habitat for Humanity volunteers and employees to be licensed and regulated as MLOs under the CFLL or the CRMLA, when engaging in activity under the circumstances described above.

The Department's position as set forth in this release is interim, pending HUD's final rules regarding the SAFE Act. The Department will revisit the matters set forth in this Release if HUD reaches a contrary position regarding whether a HUD-certified housing counselor, and/or a Habitat for Humanity volunteer or employee, meets the definition of an MLO under the SAFE Act (which is substantially similar to the definition under the CFLL and the CRMLA). Even if the HUD rules are consistent with this Release, the Department may consider adopting formal rules reflecting any guidance from HUD.

Questions regarding whether a particular nonprofit lender or its employees are required to be licensed under either the CRMLA or the CFLL are answered based on a case-by-case basis, depending on factual circumstances of the nonprofit lender, and therefore the Department cautions other nonprofit lenders and their employees to seek guidance from the Department of Corporations prior to engaging in lending activity that may require licensure under the CFLL or the CRMLA.

(As a general example of case-by-case rulings, see past opinions OP 6615 CFLL, OP 5348, and OP 5491 – non-precedential - for guidance related to whether a non-profit corporation is “engage[d] in the business of a finance lender or broker” for purposes of Section 22100 of the Financial Code.)

For further assistance, please contact Colleen Monahan, Deputy Commissioner of Legislation and Policy, at (916) 322-3553, or Gillian G.M. Small, Acting General Counsel, at (415) 972-8533.

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