

SAFE Act

The manufactured housing industry regulator, the U.S. Department of Housing and Urban Development, has sent a proposed rule to the federal Office of Management and Budget concerning HUD's position on enforcement of the SAFE Act, and whether, or to what extent, retail center sales staff should be exempt.

The SAFE Act, approved by Congress in 2008, requires more stringent controls and licensing for people obtaining or working with consumers to obtain a home finance loan. This includes all manufactured housing.

States were required to pass their own SAFE acts. Some states obtained exemptions from the law's provisions for the retail center sales staff for routine administrative acts in discussing finances and for which they received no extra compensation. West Virginia was one of those states. However, owners of rental communities who finance sales transactions within their communities are subject to the act's provision and must be licensed as mortgage lenders, just like a bank.

Complicating the scene, Congress last year approved the Wall Street reform act, commonly called "Dodd-Frank," which tightens lending regulations. The act sets up a super agency to oversee its provisions and brings other related laws under this umbrella group. The agency is known as the Consumer Financial Protection Bureau. The CFPB becomes operational July 21, 2011. CFPB will have jurisdiction over the SAFE Act, too.

HUD legally cannot disclose what its final rule interpreting the SAFE Act is. We will not know until it is made public, probably after CFPB comes into effect, according to Deborah Robertson, with the Albany, N.Y., law firm of McGlinchey Stafford, PLLC, a consulting group with the Manufactured Housing Institute of Arlington, Va.

MHI asked HUD for an exemption from the licensing provisions of the SAFE Act for five or less sales, which is known as a Di Minimis exemption, but HUD declined, saying it did not have the authority to issue an exemption for the industry. Robertson believes HUD will leave to CFPB clarifications since the bureau will have oversight and enforcement responsibilities.

Will the CFPB grant exemptions to the manufactured housing industry?

Here's what Peggy Twohig, leader of nonbank supervision at CFPB, recently said: "Many corporations other than banks provide consumer financial products and services. Nonbank financial companies can have a huge impact on consumers, but, unlike banks, they have not been subject to regular federal reviews to make sure they play by the rules. My team is planning a new federal supervision program to oversee these companies. When banks and nonbank companies are subject to similar federal oversight, consumers across the entire marketplace will be better protected."

Richard Ernst, president of Financial Marketing Associates, Inc., of Dallas, Texas, has been in the manufactured housing business for 40 years. He has developed a program to aid community owners to be complaint with the SAFE Act.

He believes states will use the SAFE Act as a way to pick up additional licensing and audit fees; fines and penalties.

Robertson said rent-to-own and lease-to-purchase agreements within communities likely will also fall under the licensing provisions of the SAFE Act.

Here are additional trouble spots they outlined:

--If you are a retailer and using a retail installment contract, you are a lender and are subject to SAFE Act licensing.

--If your retail dealership is doing business with third-party lenders and using retail installment contracts, you should be licensed.

Ernst is working with San Antonio Credit Union to handle problems community owners, who self-finance, might face in dealing with the SAFE Act.