

Below is a summary of HUD's Overview of Key Clarifications, focusing on how it affects the manufactured housing industry. It is important to understand that this is a list of "key clarifications" it is not a summary of the final rule. There is likely guidance in the preamble, final rule and appendix on what is taking an application that may be very helpful to the lenders and the larger retailers. However, this Overview is limited to 8 key clarifications – none of which speak to what is taking, offering, negotiating or explain compensation. All of which we need clarification for the industry.

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The Overview sets forth "key clarifications" made by the Final Rule. It does not describe the entire final rule nor the entire preamble. There are eight (8) "key clarifications".

1. An individual must "engage in the business of a loan originator" in order to be subject to licensing.

This clarification may prove helpful to community owners and small retailers. In this clarification, HUD is focusing on what it means for an individual to "engage in the business" of a loan originator. HUD states, "It is HUD's view that the SAFE Act's distinction between individuals who may meet the definition of "loan originator" (because of the activities they carry out) versus those individuals who "engage in the business" of a loan originator, *means that not every individual who acts as a loan originator is necessarily subject to the SAFE Act's licensing and registration requirements.*"

HUD sets forth two requisites that must be met before an individual can be said to be "engaged in the business" of a loan originator.

Requisite #1: *Commercial Context*. There must be a commercial aspect to the financed transaction. Basically, this means there must be an intention/purpose to make a profit from the financed transaction.

Requisite #2: *Habitualness or Repetition*. The individual must act as a loan originator habitually or with repetition. Requisite #2 can be met if "either the individual who acts as a loan originator does so with a degree of habitualness or repetition, or if the source of the financing [(the lender)] provides such financing or performs other phases of the originations of residential mortgage loans with a degree of habitualness or repetition.

The absence of either requisite, means the activity the individual is engaged in DOES NOT constitute the "business" of a loan originator. Unfortunately, HUD does not provide a clear definition of what constitutes habitualness or repetition in its Overview. However, there is reference to an appendix to the final rule that hopefully will provide us with more guidance. HUD seems to be suggesting that states can and should set forth de minimis exemptions. HUD later states in its discussion on seller financing that, "HUD has no authority under the SAFE Act to establish a "de minimis" exemption that would shield individuals who do engage in the business of a loan originator, ... but who do so infrequently."

2. The SAFE Act does not cover employees of government agencies or housing finance agencies.
3. The SAFE Act does not cover employees of bona fide non-for profits.
4. An individual offering seller financing may not be “engaging in the business” of loan originator.

Here HUD focuses on the fact that if an individual is financing the sale of his/her own residence, is not likely to be in the “business” of a loan originator because the individual is not doing so habitually or for commercial context. HUD goes into a discussion suggesting that seller financing, if infrequent, may not trigger the SAFE Act even if the seller has never lived in the property. “[T]here may be case where the seller of a property or properties in which the seller has never lived may provide financing for the sale without the seller’s acts arising to engaging in the business of a loan originator.” HUD defers to the states on creating a potential “de minimis” number.

5. HUD may not grant exemptions under the SAFE Act.
6. HUD is removing from its list of activities exempt from licensing: (a) an individual who negotiates terms of a residential mortgage loan on behalf of a family member, (b) an individual who only offers or negotiates terms of a residential mortgage loan that serves as the individual’s residence, and (c) a licensed attorney who only negotiates the terms of a residential mortgage loan on behalf of a client. Although HUD is removing these activities from its list of exempt activities, it still takes the position that the activities do not constitute engaging in the business of a loan originator.
7. HUD emphasizes that it is the individual’s activities, not their job title or transaction type that causes the person to be subject to the SAFE Act.
8. HUD defers to the CFPB to conclude whether loan modification activities are subject to the SAFE Act. Refinancings are covered under the SAFE Act.