

Subpart E—Enforcement of the Bureau's Licensing System

§ 1008.401 The Bureau's authority to examine loan originator records.

(a) *Summons authority.* The Bureau may:

(1) Examine any books, papers, records, or other data of any loan originator operating in any state which is subject to a licensing system established by the Bureau under subpart C of this part; and

(2) Summon any loan originator referred to in paragraph (a)(1) of this section or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the Bureau at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of the S.A.F.E. Act.

(b) *Examination authority—(1) In general.* If the Bureau establishes a licensing system under 12 U.S.C. 5107 and in accordance with subpart C of this part for any state, the Bureau shall appoint examiners for the purposes of ensuring the appropriate administration of the Bureau's licensing system.

(2) *Power to examine.* Any examiner appointed under paragraph (b)(1) of this section shall have power, on behalf of the Bureau, to make any examination of any loan originator operating in any state which is subject to a licensing system established by the Bureau under 12 U.S.C. 5107 and in accordance with subpart C of this part, whenever the Bureau determines that an examination of any loan originator is necessary to determine the compliance by the originator with minimum requirements of the S.A.F.E. Act.

(3) *Report of examination.* Each Bureau examiner appointed under paragraph (b)(1) of this section shall make a full and detailed report to the Bureau of examination of any loan originator examined under this section.

(4) *Administration of oaths and affirmations; evidence.* In connection with examinations of loan originators operating in any state which is subject to a licensing system established by the Bu-

reau under 12 U.S.C. 5107, and in accordance with subpart C of this part, or with other types of investigations to determine compliance with applicable law and regulations, the Bureau and the examiners appointed by the Bureau may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) *Assessments.* The cost of conducting any examination of any loan originator operating in any state which is subject to a licensing system established by the Bureau under 12 U.S.C. 5107 and in accordance with subpart C of this part shall be assessed by the Bureau against the loan originator to meet the Director's expenses in carrying out such examination.

§ 1008.403 [Reserved]

§ 1008.405 [Reserved]

APPENDIX A TO PART 1008—EXAMPLES OF MORTGAGE LOAN ORIGINATOR ACTIVITIES

This appendix provides examples to aid in the understanding of activities that would cause an individual to fall within or outside the definition of a mortgage loan originator under part 1008. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise. For purposes of the examples below, the term "loan" refers to a residential mortgage loan as defined in § 1008.23 of this part.

(a) *Taking a Loan Application.* Taking a residential mortgage loan application within the meaning of § 1008.103(c)(1) means receipt by an individual, for the purpose of facilitating a decision whether to extend an offer of loan terms to a borrower or prospective borrower, of an application as defined in § 1008.23 (a request in any form for an offer, or a response to a solicitation of an offer, of residential mortgage loan terms, and the information about the borrower or prospective borrower that is customary or necessary in a decision whether to make such an offer).

(1) The following are examples to illustrate when an individual takes, or does not take, a loan application:

(i) An individual "takes a residential mortgage loan application" even if the individual:

(A) Has received the borrower or prospective borrower's request or information indirectly. Section 1008.103(c)(1) provides that an individual takes an application, whether he or she receives it "directly or indirectly"

from the borrower or prospective borrower. This means that an individual who offers or negotiates residential mortgage loan terms for compensation or gain cannot avoid licensing requirements simply by having another person physically receive the application from the prospective borrower and then pass the application to the individual;

(B) Is not responsible for verifying information. The fact that an individual who takes application information from a borrower or prospective borrower is not responsible for verifying that information—for example, the individual is a mortgage broker who collects and sends that information to a lender—does not mean that the individual is not taking an application;

(C) Only inputs the information into an on-line application or other automated system; or

(D) Is not involved in approval of the loan, including determining whether the consumer qualifies for the loan. Similar to an individual who is not responsible for verification, an individual can still “take a residential mortgage loan application” even if he or she is not ultimately responsible for approving the loan. A mortgage broker, for example, can take a residential mortgage loan application even though it is passed on to a lender for a decision on whether the borrower qualifies for the loan and for the ultimate loan approval.

(ii) An individual does not take a loan application merely because the individual performs any of the following actions:

(A) Receives a loan application through the mail and forwards it, without review, to loan approval personnel. The Bureau interprets the term “takes a residential mortgage loan application” to exclude an individual whose only role with respect to the application is physically handling a completed application form or transmitting a completed form to a lender on behalf of a borrower or prospective borrower. This interpretation is consistent with the definition of “loan originator” in section 1503(3) of the S.A.F.E. Act.

(B) Assists a borrower or prospective borrower who is filling out an application by explaining the contents of the application and where particular borrower information is to be provided on the application;

(C) Generally describes for a borrower or prospective borrower the loan application process without a discussion of particular loan products; or

(D) In response to an inquiry regarding a prequalified offer that a borrower or prospective borrower has received from a lender, collects only basic identifying information about the borrower or prospective borrower on behalf of that lender.

(b) *Offering or Negotiating Terms of a Loan.* The following examples are designed to illustrate when an individual offers or negotiates terms of a loan within the meaning of

§1008.103(c)(2) and, conversely, what does not constitute offering or negotiating terms of a loan:

(1) Offering or negotiating the terms of a loan includes:

(i) Presenting for consideration by a borrower or prospective borrower particular loan terms, whether verbally, in writing, or otherwise, even if:

(A) Further verification of information is necessary;

(B) The offer is conditional;

(C) Other individuals must complete the loan process;

(D) The individual lacks authority to negotiate the interest rate or other loan terms; or

(E) The individual lacks authority to bind the person that is the source of the prospective financing.

(i) Communicating directly or indirectly with a borrower or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms, including responding to a borrower or prospective borrower’s request for a different rate or different fees on a pending loan application by presenting to the borrower or prospective borrower a revised loan offer, even if a mutual understanding is not subsequently achieved.

(2) Offering or negotiating terms of a loan does not include any of the following activities:

(i) Providing general explanations or descriptions in response to consumer queries, such as explaining loan terminology (*e.g.*, debt-to-income ratio) or lending policies (*e.g.*, the loan-to-value ratio policy of the lender), or describing product-related services;

(ii) Arranging the loan closing or other aspects of the loan process, including by communicating with a borrower or prospective borrower about those arrangements, provided that any communication that includes a discussion about loan terms only verifies terms already agreed to by the borrower or prospective borrower;

(iii) Providing a borrower or prospective borrower with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the bank;

(iv) Making an underwriting decision about whether the borrower or prospective borrower qualifies for a loan;

(v) Explaining or describing the steps that a borrower or prospective borrower would need to take in order to obtain a loan offer, including providing general guidance about qualifications or criteria that would need to be met that is not specific to that borrower or prospective borrower’s circumstances;

(vi) Communicating on behalf of a mortgage loan originator that a written offer has

been sent to a borrower or prospective borrower without providing any details of that offer; or

(vii) Offering or negotiating loan terms solely through a third-party licensed loan originator, so long as the nonlicensed individual does not represent to the public that he or she can or will perform covered activities and does not communicate with the borrower or potential borrower. For example:

(A) A seller who provides financing to a purchaser of a dwelling owned by that seller in which the offer and negotiation of loan terms with the borrower or prospective borrower is conducted exclusively by a third-party licensed loan originator;

(B) An individual who works solely for a lender, when the individual offers loan terms exclusively to third-party licensed loan originators and not to borrowers or potential borrowers.

(c) *For Compensation or Gain.* (1) An individual acts “for compensation or gain” within the meaning of §1008.103(c)(2)(ii) if the individual receives or expects to receive in connection with the individual’s activities anything of value, including, but not limited to, payment of a salary, bonus, or commission. The concept “anything of value” is interpreted broadly and is not limited only to payments that are contingent upon the closing of a loan.

(2) An individual does not act “for compensation or gain” if the individual acts as a volunteer without receiving or expecting to receive anything of value in connection with the individual’s activities.

APPENDIX B TO PART 1008—ENGAGING IN THE BUSINESS OF A LOAN ORIGINATOR: COMMERCIAL CONTEXT AND HABITUALNESS

An individual who acts (or holds himself or herself out as acting) as a loan originator in a commercial context and with some degree of habitualness or repetition is considered to be “engage[d] in the business of a loan originator[.]” An individual who acts as a loan originator does so in a commercial context if the individual acts for the purpose of obtaining anything of value for himself or herself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes. The habitualness or repetition of the origination activities that is needed to “engage in the business of a loan originator” may be met either if the individual who acts as a loan originator does so with a degree of habitualness or repetition, or if the source of the prospective financing provides mortgage financing or performs other origination activities with a degree of habitualness or repetition. This appendix provides examples to aid in the understanding of activities that would not constitute engaging in the busi-

ness of a loan originator, such that an individual is not required to obtain and maintain a state mortgage loan originator license. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under part 1008. For purposes of the examples below, the term “loan” refers to a “residential mortgage loan” as defined in §1008.23 of this part.

(a) *Not Engaged in the Business of a Mortgage Loan Originator.* The following examples illustrate when an individual generally does not “engage in the business of a loan originator”:

(1) An individual who acts as a loan originator in providing financing for the sale of that individual’s own residence, provided that the individual does not act as a loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual and commercial activity.

(2) An individual who acts as a loan originator in providing financing for the sale of a property owned by that individual, provided that such individual does not engage in such activity with habitualness.

(3) A parent who acts as a loan originator in providing loan financing to his or her child.

(4) An employee of a government entity who acts as a loan originator only pursuant to his or her official duties as an employee of that government entity, if all applicable conditions in §1008.103(e)(6) of this part are met.

(5) If all applicable conditions in §1008.103(e)(7) of this part are met, an employee of a nonprofit organization that has been determined to be a bona fide nonprofit organization by the state supervisory authority, when the employee acts as a loan originator pursuant to his or her duties as an employee of that organization.

(6) An individual who does not act as a loan originator habitually or repeatedly, provided that the source of prospective financing does not provide mortgage financing or perform other loan origination activities habitually or repeatedly.

APPENDIX C TO PART 1008—INDEPENDENT CONTRACTORS AND LOAN PROCESSOR AND UNDERWRITER ACTIVITIES THAT REQUIRE A STATE MORTGAGE LOAN ORIGINATOR LICENSE

The examples below are designed to aid in the understanding of loan processing or underwriting activities for which an individual is required to obtain a S.A.F.E. Act-compliant mortgage loan originator license. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under part 1008. For purposes of